[redacted]

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted]

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

FILED AUGUST 28, 1968
JURISDICTION NOTED NOVEMBER 12, 1968

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 400

JIM GARRISON, APPELLANT,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

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[fol. 5]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

State of Louisiana v. Jim Garrison No. 177-418

CHRONOLOGICAL ORDER OF MINUTE ENTRIES

November 15, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Petition to Hon. Jack P. F. Gremillion, Attorney General, State of Louisiana, Baton Rouge, La., filed.

Order of Supreme Court of Louisiana filed.

Motion of Jack P. F. Gremillion, Attorney General, filed.

November 19, 1962.

Hon. Jack P. F. Gremillion, Attorney General, moved the Court, orally, that because this Hon. Court has previously recused itself in the matter of the State of La. vs Jim Garrison, No. 177-418, that the Hon. William H. Ponder, Judge of the Eleventh Judicial District, ascend the bench for this case only, which Motion the Court granted. Thereafter the Hon. Edward A. Haggerty, Jr., recused himself, and the Hon. William H. Ponder, in accordance with the assignment of the Hon. Louisiana Supreme Court of Nov. 13, 1962, filed herein on Nov. 14, 1962, ascended the bench.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information, Jim Garrison, in proper person, was placed at the bar of the Court, unattended by Counsel but representing himself.

The State was represented by Jack P. F. Gremillion, [fol. 6] Attorney General, Michael E. Culligan, Assistant Attorney General, and John E. Jackson, Jr., Assistant Attorney General.

Mr. Gremillion moved the Court that the Motion, previously filed herein, for the District Attorney, Mr. Jim Garrison, to recuse himself in the above matter be called.

The State, through the Attorney General, Mr. Jack P. F. Gremillion, submitted said Motion to the Court.

The defendant, Jim Garrison, advised the Court that he had no opposition to the Motion To Recuse Himself and submitted same to the Court.

Thereupon the Court ordered that the Motion for the District Attorney to Recuse himself in This Case be made absolute.

The State, represented by Mr. Gremillion, moved the Court to set a time for the defendant to secure Counsel, time to file special pleadings, that a date be fixed for the State to reply and further that a date for the hearing on said pleadings be fixed.

Thereupon the Court granted the Defendant the remainder of this week to secure Counsel; an additional ten days thereafter for filing of all Motions and Pleadings, prior to arraignment. The State was granted seven days thereafter to reply.

Thereupon the Court set the following dates: Defendant to file Motions and Pleadings by Dec. 4, 1962. State to file Answers by December 11, 1962. Tentative date to hear arguments, December 17, 1962.

The Court ordered that the Attorney General and the Court be furnished with copies of all Defense Motions and Pleadings and also that the Court be furnished with a memoranda of authorities.

[fol. 7] The Court further ordered that the Defense and the Court be furnished with copies of the State's Answers and further that the Court be furnished with a memoranda of authorities.

The defendant was released by the Court, on his own recognizance.

The Hon. William H. Ponder thereupon descended the bench and the Hon. Edward A. Haggerty, Jr., again ascended the bench for the trial of the remainder of the Docket of Section "C" of this Court.

December 4, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Motion to Recuse, Demurrer and Motion to Quash, and Application for Bill of Particulars filed in the Clerk's Office of the Criminal District Court by Donald V. Organ, Esq., Counsel for the defendant in the above information.

December 5, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Motion for a Trial by Jury, as to the defendant in the above information, filed in the Clerk's Office of the Criminal District Court.

[fol. 8] December 12, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

Answer to Motion for Trial by Jury, Memorandum in Support of Answer filed to Defendant's Motion for Trial by Jury, Answer to Demurrer and Motion to Quash, Answer to Application for Bill of Particulars and Brief by State, filed by Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, in the Clerk's Office of the Criminal District Court on December 11, 1962, as to the defendant in the above information.

December 17, 1962.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis Trent, Esq., for a hearing on Motion to Recuse, Application for Bill of Particulars, Motion for Trial by Jury, and Demurrer and Motion to Quash. The State was represented by Jack P. F. Gremillion, Attorney General, M. E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General. The Court having heard arguments by Donald V. Organ, Esq., and Louis Trent, Esq., representing the Defense, and Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, and considering the Motions and Memoranda of Authorities in support of said Motions, overruled all four Motions. To which rulings of the Court, Bills of Exceptions were reserved by Defense [fol. 9] Counsel. The Court reserved the right to give additional reasons for its rulings. The defendant was arraigned and, personally and through his Counsel, waived the reading of the Bill of Information and entered a plea of Not Guilty. The Court ordered the plea of Not Guilty recorded. Trial Especially set for Monday, January 21, 1963. Defendant discharged on his bond.

January 18, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

On Motion of Jack P. F. Gremillion, Attorney General, William H. Ponder, Judge Ad Hoc, ordered Writs of Subpoena Duces Tecum issued on W.W.L. T-V and W.D.S.U. T-V, and the Times Picayune Publishing Company.

January 21, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esq., for trial. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General. Both sides announced readiness for trial. Miss Margie Witt was duly sworn by the Court to act as a special Court Reporter. Witnesses for the State and the Defense were called. On Motion of the Defense the Court ordered the sequestration of all witnesses, and further ordered the witnesses not to discuss this [fol. 10] case, except with their Counsel, until after the conclusion of the trial. By agreement of the State and the Defense all television and newspaper men were excused from sequestration.

Thereupon Mr. Bert Heyd was duly sworn by the Clerk testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and an article in a newspaper, dated November 2, 1962, was identified. The State offered and the Court ordered filed in evidence the said article, published in the N.O. States-Item on November 2, 1962, which was marked as State Exhibit No. 1. In connection with the re-direct examination of this witness, objection by the Defense was overruled by the Court and a Bill of Exceptions was reserved, as noted by the Stenographer. Donald W. Coleman was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness, State Exhibit No. 1 was identified. It was stipulated by the State and the Defense that if Mr. Walter Cowan was present he would testify that he had received on the teletype the statement given by Mr. Garrison to Mr. Heyd. Arthur Roane and Jack Dempsey were each duly sworn by the Clerk, each testified on the part of the State and were each cross-examined by the Defense. In connection with the testimony of these wit-

nesses, the defendant was identified. In connection with the testimony of Mr. Roane, objection by Defense Counsel was overruled by the Court on three occasions and Bills of Exceptions were reserved, all as noted by the Stenographer. At 12:05 P.M. Court recessed for lunch.

[fol. 11] At 1:15 P. M. Court resumed. The defendant being present, Counsel for the defendant and Mr. Gremillion and Mr. Jackson, representing the State, being present, the Court ordered the further trial of this case to proceed. Thereupon the Court duly swore Miss Helen Dietrich and Miss Monya Burglass to act as Special Court Reporters. The Court ordered the sequestration of all witnesses. Counsel for the Defense moved the Court that a Bill of Exceptions be reserved as to all statements made prior to November 2, 1962. It was stipulated by the Defense and the State that the article in the States-Item newspaper on August 20, 1962 is the report of Jack Dempsey of statement made to him. The Court overruled making this newspaper clipping a part of the record as the statement does not show malice, but by stipulation the clipping of August 20, 1962, marked State Exhibit No. 2, was filed in evidence. Jack Dempsey retook the witness stand and further testified on the part of the State and was cross-examined by the Defense. Jack Kneece was duly sworn by the Clerk, testified on the part of the State. In connection with the testimony of this witness the defendant was identified. Objection by Defense Counsel to question by the State and answer of this witness was overruled by the Court and Bill of Exceptions was reserved, as noted by the stenographer. Mrs. Theresa Shean was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness the defendant was identified. It was stipulated by the Defense that the copy of statements made by the defendant were made by him. The State offered the said statements, marked State Exhibit No. 3, filed in evidence. On Motion of the Defense, there being no objection on the part of the State, the [fol. 12] statement was read to the Court by Assistant Attorney General John Jackson, Jr. Robert N. Kelso was duly sworn by the Clerk testified on the part of the State and was cross-examined by the Defense. In connection with

the testimony of this witness, newspaper clippings dated December 4, 1962, marked State No. 4, December 5, 1962, marked State No. 5, December 6, 1962, marked State No. 6, and December 7, 1962, marked State No. 7, were identified. The State offered the said exhibits filed in evidence. There being no objection on the part of the Defense, the said exhibits were filed in evidence. Objection by Defense Counsel to an answer given by this witness to a question by the State was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. Bill Reed, Bern Rotman, and Wieck W. Thimmesch were each duly sworn by the Clerk and testified on the part of the State and Mr. Reed was cross-examined by the Defense. Defense Counsel stated to the Court that he wished the same Bill of Exceptions reserved as to these witnesses and that their testimony be restricted solely to that part which showed malice. Judge Malcolm V. O'Hara was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the defense. Motion by Defense Counsel that an answer given by this witness be stricken from the record was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. The Defense moved the Court that this Bill of Exceptions be reserved as to the testimony of all the Judges if they should take the witness stand. It was now 5:00 o'clock P.M. and Court adjourned until Tuesday, January 22, 1963, at 10:00 o'clock A.M.

[fol. 13] January 22, 1963.

State of Louisiana v. Jim Garrison

Information for Violation R.S. 14:47

The defendant in the above information being present, Counsel for the defendant, Donald V. Organ, Esq., and Louis T. Trent, Esq., being present, Attorney General Jack P. F. Gremillion, and Assistant Attorney Generals Michael E. Culligan and John E. Jackson, Jr., representing the State, being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses. Thereupon Judge Malcolm V. O'Hara re-

sumed the witness stand for re-direct examination by the State and re-cross examination by the Defense. Judge William J. O'Hara was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness the defendant was identified and it was stipulated by the Defense and the State that the testimony of all the Judges other than the testimony showing malice is covered in one Bill of Exceptions previously reserved. In connection with the testimony of this witness on cross-examination by the Defense, photo-static copies of Motions and Orders were identified and filed in evidence by the Defense and marked D-1, D-2, D-3, D-4, D-5, and D-6. At 12:00 o'clock noon Court recessed for lunch.

At 1:15 o'clock P. M., the defendant being present, Counsel for the defendant and the Attorney General and Assistant Attorney General, representing the State, being present, the Court ordered the further trial of this case to proceed.

Thereupon Judge William J. O'Hara resumed the wit- [fol. 14] ness stand and was further cross-examined by the Defense. Judge Shirley G. Wimberly and Judge Oliver P. Schulingkamp were each duly sworn by the Clerk, each testified on the part of the State and were each cross-examined by the Defense. In connection with the testimony of these witnesses the defendant was identified. In connection with the testimony of Judge Wimberly, objection by the Defense was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. In connection with the cross-examination of this witness, Defense Exhibit No. 1 was identified and photo-static copies of Motions and Orders, marked D-7, D-8, D-9, D-10, were identified and thereupon filed in evidence by the Defense. On Motion of the Defense an Instanter Subpoena was issued for the record of No. 162-231, Section B. This witness further identified Motions and Orders, marked D-11, D-12, D-13, D-14, and D-15, which were thereupon filed in evidence by the Defense. In connection with the re-direct examination of this witness by the State, a copy of a letter dated Oct. 26, 1962 with a list attached was identified and filed in

evidence by the State marked as State Exhibit No. 8. In connection with the testimony of Judge Schulingkamp, State Exhibit No. 8, previously introduced, was identified. Objection by Defense Counsel to questions by the State and Answers by this witness were overruled by the Court on two occasions and Bills of Exceptions were reserved, all as noted by the stenographer. On Motion of Defense Counsel Instanter Subpoenas were issued on the Clerk of the Criminal District Court for the original Motion of J. David McNeill, dated June 1, 1961, and for the original Motion of [fol. 15] Joseph R. Bossetta, dated August 3, 1961. Objection by the State to offers made by the Defense of documents, marked D-16 and D-17, were sustained by the Court and the said documents were not allowed in evidence. The original Motion of J. David McNeill, marked D-18, was identified by this witness and filed in evidence by the Defense. Judge Edward A. Haggerty, Jr., was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness, the defendant was identified. Defense Counsel stated to the Court that he wished to make the same objection with regard to the line of questioning by the State of this Judge as previously made with regards to the other Judges and reserved the same Bill of Exceptions.

The Court at this time ordered the transcript of the testimony of Monday, January 21, 1963, corrected to read, "The Court reserves the right to assign reasons in a per curiam at a later date, which will be attached to the bill of exceptions". The Court ordered the words "made a part of the Bill of Exceptions" deleted throughout the transcript.

Objection by Defense Counsel to answer by this witness was overruled by the Court and Bill of Exceptions was reserved, as noted by the stenographer.

It now being 5:00 o'clock P. M. Court adjourned until Wednesday, January 23, 1963, at 10: o'clock A.M.

[fol. 16] January 23, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R. S. 14:47

The defendant in the above information being present, Counsel for the defendant and the attorney General and Assistant Attorney Generals representing the State being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses. Thereupon Judge Edward A. Haggerty, Jr., resumed the witness stand testified further on the part of the State and was cross-examined by the Defense. In connection with the cross-examination of this witness, on Motion of the Defense an Instanter Subpoena was issued on the Clerk of the Criminal District Court to produce the original Motion and Order in case No. 165-564. The record was brought into Court and the original Motion and Order which was signed by this witness was identified. Hotel bills with letter attached, marked D-19 by the defense, was filed in evidence. Judge Bernard J. Bagert was duly sworn by the Clerk and testified on the part of the State. In connection with the testimony of this witness the defendant was identified. At 12:00 o'clock noon Court recessed for lunch.

At 1:15 o'clock P.M., the defendant being present, Counsel for the defendant and the Attorney General and Assistant Attorney Generals, representing the State, being present, the Court ordered the further trial of this case to proceed, and further ordered the sequestration of all witnesses.

Judge Bernard J. Bagert resumed the witness stand further testified on the part of the State and was cross-
[fol. 17] examined by the Defense. This witness was instructed by the Court to remain under the rule as he may be recalled in rebuttal.

Judge George P. Platt was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and a photo-static

copy of a Bill of Sale, marked D-20 by the defense, was identified and filed in evidence. On Motion of the Defense an Instanter Subpoena was issued on the Clerk of the Criminal District Court to produce the record in case No. 159-238. The said record was brought into Court and the names of the defendants and the charge was read by defense Counsel.

Judge Thomas M. Brahney, Jr., was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified and objection by the Defense to question by the State and answer by this witness was overruled by the Court and a Bill of Exceptions was reserved, as noted by the stenographer. State Exhibit No. 8 was identified by this witness.

Judge J. Bernard Cocke was duly sworn by the Clerk, testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, the defendant was identified. Copy of a letter to Honorable C. C. Taddy Aycock; dated August 2, 1962, marked D-21 by the defense, was identified by this witness [fol. 18] and thereupon filed in evidence by the Defense.

At 5:07 o'clock P.M. Court adjourned until Thursday, January 24, 1963, at 10:00 o'clock A. M.

January 24, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information being present, Counsel for the defendant and the Attorney General and Assistant Attorney Generals representing the State being present, the Court ordered the further trial of this case to proceed. The Court ordered the sequestration of all witnesses.

Mr. Gremillion stated to the Court that he had been informed by the Court Reporters that they could not go

much longer at the rate they have been working and moved the Court to recess until Monday, January 28th, after hearing today's testimony. The Court stated that he would advise them of his decision on this matter later on in the day.

Thereupon, both sides having announced readiness to proceed, Judge J. Bernard Cocke retook the witness stand and was further cross-examined by the Defense.

An Application for Writ of Subpoena Duces Tecum on Captain Theodore Gregson, returnable Monday, January 28, 1963, was filed by the Defense. There being no objection on the part of the State, the Court ordered the issuance of the said Writ.

Supt. Joseph I. Giarrusso was duly sworn by the Clerk [fol. 19] testified on the part of the State and was cross-examined by the Defense. In connection with the testimony of this witness, objection by the Defense was overruled by the Court on two occasions and Bills of Exceptions were reserved, as noted by the stenographer.

The State rested. The Defense rested.

Defense Counsel submitted to the Court sixteen propositions of law.

At 11:25 o'clock A.M. Court recessed for lunch.

At 1:30 o'clock P. M. Court resumed. The Court stated that he had been presented with an additional proposition of law, making a total of seventeen propositions, with the memorandum of authorities, and that the Court would need additional time to look them over prior to arguments. Court then recessed until 3:00 o'clock P. M.

At 3:00 o'clock P. M. Court resumed.

Defense Counsel asked for the ruling of the Court on the propositions of law that the Court should charge itself, prior to arguments. The Court held that some of the requested charges are correct; some might be qualified and some might be rejected. The Court stated that the requested charges would be ruled on at the next session

on Monday, February 4, 1963, arguments would be heard and the case submitted on that date.

Court then adjourned until Monday, February 4, 1963, at 10:00 o'clock A.M.

[fol. 20] February 4, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General.

Thereupon the Court, having had the seventeen propositions of law submitted by Defense Counsel under advisement, ruled on the propositions of law as follows: Numbers 1, 2 and 3 were granted by the Court, numbers 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 17 were granted by the Court with qualifications, and numbers 11, 14 and 16 were rejected by the Court.

Bills of Exception were reserved by Defense Counsel as to the Court's rulings with regards to propositions numbers 11, 13, 14, 16 and 17, all as noted by the stenographer. The Court reserved the right to amplify reasons assigned in Per Curiams which will be attached to the Bills of Exceptions. The Court heard arguments by the State and the Defense and rebuttal argument by the State. Thereupon this case was taken under advisement by the Court until Wednesday, February 6, 1963, at 10:00 o'clock A. M. Defendant discharged on his bond.

[fol. 21] February 6, 1963

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General and John E. Jackson, Jr., Assistant Attorney General.

The Court granted Motion of the Defense requesting that today's proceedings be taken by the Court Reporter. The Court reserved the right to make corrections, where necessary, in the transcript of the trial of this case.

Thereupon the Court, having fully reviewed all the testimony and all the exhibits, rendered judgment of "Guilty as Charged."

Motion For A New Trial and Motion in Arrest of Judgment were filed by Defense Counsel. The Court stated that he will notify the Clerk of Court of the date on which he will rule on said Motions. Defendant discharged on his bond.

Prior to the Court taking leave of the Bench, while in the act of receiving from the Minute Clerk copies of Motions filed, one Philip Guarisco, photographer for The Times-Picayune newspaper, took a flash photograph of the Judge. The Court immediately announced that Court was in session and called the Court to order. After questioning Mr. Guarisco at length, and after having ascertained that the same person, Mr. Guarisco, had previously disobeyed the [fol. 22] Court's instructions, the Court found the said Mr. Guarisco guilty of contempt of Court. The Court sentenced Mr. Guarisco to pay a fine of twenty-five dollars ($25.00) or, in default of payment of said fine, to serve ten (10) days in the parish prison.

February 19, 1963

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

On Motion of Jim Garrison, District Attorney for the Parish of Orleans, the Court this day signed the following order:

It Is Ordered that Jim Garrison, District Attorney for the Parish of Orleans, pay to the firm of Dietrich & Witt, Inc., the sum of $3,315.82, as per bills attached. It is further ordered that Jim Garrison, District Attorney for the Parish of Orleans pay this amount, $3,315.82, out of the fines and forfeitures account which is under the control of the District Attorney for the Parish of Orleans, State of Louisiana.

New Orleans, La.

February 19, 1963

Jim Garrison, District Attorney, Parish of Orleans;

Jack P. F. Gremillion, Attorney General, State of Louisiana.

George P. Platt, Judge of Section "B";

J. Bernard Cocke, Judge, Judge of Division "E";

Shirley G. Wimberly, Judge of Division "G";

[fol. 23] Bernard J. Bagert, Judge of Division "H";

Edward A. Haggerty, Jr., Judge, Judge of Division "C";

Thos. M. Brahney, Jr., Judge of Division "D";

Oliver P. Schulingkamp, Judge of Division "F";

Malcolm V. O'Hara, Judge of Division "A".

February 28, 1963.

State of Louisiana vs. Jim Garrison

Information for Viol. R.S. 14:47

The defendant in the above information was placed at the bar of the Court attended by Donald V. Organ, Esq., and Louis T. Trent, Esquire. The State was represented by Jack P. F. Gremillion, Attorney General, John E. Jackson, Jr., Assistant Attorney General and Robert S. Link, Assistant Attorney General. Motion for A New Trial and Motion In Arrest of Judgment, previously filed, were submitted by Defense Counsel. Motion in Arrest of Judgment was overruled by the Court. To which ruling of the Court, Bill of Exceptions was reserved, as noted by the Stenog-[fol. 24] rapher. Motion For A New Trial was overruled by the Court. To which ruling of the Court, Bill of Exceptions was reserved, as noted by the Stenographer. Said Bills of Exceptions were submitted to the Court by Defense Counsel. The Court advised Counsel for the Defense that it would be necessary for the Court to make some corrections in the transcript of this case. Defense Counsel advised the Court that they had no objections to the Court having the necessary corrections made.

Thereupon the defendant, through his Counsel, waived all legal delays, and was thereupon sentenced by the Court to pay a fine of one thousand dollars ($1,000.00). Motion for Appeal To Supreme Court of Louisiana was filed by Defense Counsel. Thereupon Court recessed until 2:00 o'clock P.M., in order that the Court might review the Bills of Exceptions.

At 2:04 o'clock P.M., the defendant being present, Counsel for defendant and the Attorney General and Assistant Attorney Generals, representing the State, being present, Court resumed.

Thereupon the Court, acting under authority of Law, amended and corrected the sentence previously imposed to read "to pay a fine of one thousand dollars ($1,000.00) or, in default of payment of said fine, to serve four (4) months in the Parish Prison."

Bills of Exceptions No. 1, No. 2, No. 3, No. 4, No. 6, No. 8, No. 9, No. 10, No. 11, No. 15, No. 16, No. 17, No. 18, No. 20, No. 21, No. 22, No. 23, No. 24, No. 25, and No. 26, with the [fol. 25] Per Curiams attached thereon, were filed.

The following Order was signed by the Court.

Order

Let a Suspensive appeal be granted in this case on behalf of the defendant, Jim Garrison, to the Supreme Court of the State of Louisiana, and let the return date be the 28th day of March, 1963, and pending said suspensive appeal, let the defendant be released on bond in the amount of $500.00 on his own recognizance.

New Orleans, Louisiana, 28th day of February, 1963, at 2:08 P.M.

Wm. H. Ponder, Judge.

Defendant discharged on his bond of five hundred dollars ($500.00) on his own recognizance.

Court adjourned.

[fol. 27]

In Criminal District Court

Parish of Orleans, Louisiana

Endorsements on the Reverse of the Information for Violating Revised Statute 14:47

November 19, 1962.

Hon. Jack P. F. Gremillion, Attorney General, moved the Court, orally, that because this Hon. Court has previously recused itself in the matter of the State of La. vs Jim Garrison, No. 177-418, that the Hon. William H. Ponder, Judge of the Eleventh Judicial District, ascend the bench for this case only, which Motion the Court granted. Thereafter the Hon. Edward A. Haggerty, Jr., recused himself, and the Hon. William H. Ponder, in accordance with the assignment of the Hon. Louisiana Supreme Court of Nov. 13, 1962, filed herein on Nov. 14, 1962, ascended the bench.

The defendant in the above information, Jim Garrison, in proper person, was placed at the bar of the Court, unattended by Counsel but representing himself.

The State was represented by Jack P. F. Gremillion, Attorney General, Michael E. Culligan, Assistant Attorney General, and John E. Jackson, Jr., Assistant Attorney General.

Mr. Gremillion moved the Court that the Motion, previously filed herein, for the District Attorney, Mr. Jim Garrison, to recuse himself in the above matter be called.

The State, through the Attorney General, Mr. Jack P. F. Gremillion, submitted said Motion to the Court.

The defendant, Mr. Jim Garrison, advised the Court that he had no opposition to the Motion to Recuse Himself and submitted same to the Court.

[fol. 28] Thereupon the Court ordered that the Motion for the District Attorney to Recuse Himself in This Case be made absolute.

The State, represented by Mr. Gremillion, moved the Court to set a time for the defendant to secure Counsel, time to file special pleadings, that a date be fixed for the State to reply and further that a date for the hearing on said pleadings be fixed.

Thereupon the Court granted the Defendant the remainder of this week to secure Counsel; an additional ten days thereafter for filing of all Motions and Pleadings, prior to arraignment. The State was granted seven days thereafter to reply.

Thereupon the Court set the following dates: Defendant to file Motions and Pleadings by Dec. 4, 1962. State to file Answers by Dec. 11, 1962. Tentative date to hear arguments, Dec. 17, 1962.

The Court ordered that the Attorney General and the Court be furnished with copies of all Defense Motions and Pleadings and also that the Court be furnished with a memoranda of authorities.

The Court further ordered that the Defense and the Court be furnished with copies of the State's Answers and further that the Court be furnished with a memoranda of authorities.

The defendant was released by the Court, on his own recognizance.

The Hon. William H. Ponder thereupon descended the bench and the Hon. Edward A. Haggerty, Jr., again ascended the bench for the trial of the remainder of the Docket of Section "C" of this Court.

Helen Sullivan, Minute Clerk, Section "C"

[fol. 29] Dec. 4, 1962.

Motion to Recuse, Demurrer and Motion to Quash, and Application for Bill of Particulars filed by Donald V. Organ, Esq., Counsel for defendant, in the Clerk's Office of the Criminal District Court.

Helen Sullivan, Minute Clerk.

Dec. 5, 1962.

Motion for Trial by Jury filed by Defense, in Clerk's Office of the Criminal District Court.

Helen Sullivan, Minute Clerk.

Dec. 12, 1962.

Answer to Motion for Trial by Jury, Memorandum in Support of Answer filed to Defendant's Motion for Trial by Jury, Answer to Demurrer and Motion to Quash, Answer to Application for Bill of Particulars and Brief by State filed by Jack P. F. Gremillion, Atty. Gen. State of La. and M. E. Culligan, Asst. Atty. Gen. in the Clerk's Office of the Criminal District Court on Dec. 11, 1962.

Helen Sullivan, Min. Clk.

Dec. 17, 1962.

Hearing held this day on Motion to Recuse, Application for Bill of Particulars, Motion for Trial by Jury, and Demurrer and Motion to Quash.

The Court having heard arguments by Donald V. Organ, [fol. 30] Esq., and Louis Trent, Esq., representing the Defense, and Jack P. F. Gremillion, Attorney General, and M. E. Culligan, Assistant Attorney General, representing the State, and considering motions and memoranda of authorities in support of said motions, overruled all four motions. To which rulings of the Court, Bills of Exceptions were reserved. The Court reserved the right to give additional reasons for its rulings. The defendant was arraigned and through his counsel waived the reading of the Bill of Information and entered a plea of Not Guilty. The Court ordered the plea of Not Guilty recorded.

Trial especially set for Monday, Jan. 21, 1963.

Helen Sullivan, Minute Clerk.

Jan. 18, 1963.

Writs of Subpoena Duces Tecum on W.W.L.T-V., W.D.S.U.T-V, and Times Picayune, filed by the State.

Helen Sullivan, Minute Clerk.

Jan. 21, 1963.

Trial started this day and continued through Jan. 22, 23 and 24. On Jan. 24, 1963 on Motion of the Defense a Subpoena Duces Tecum was issued on Capt. Theodore Gregson returnable Monday, Jan. 28, 1963. The State having heard all their witnesses, rested. The Defense rested without calling witnesses. Seventeen propositions of law were submitted to the Court by Defense. Court to rule on propositions and hear arguments on Feb. 4, 1963.

Helen Sullivan, Minute Clerk.

[fol. 31] February 4, 1963.

The Court this day ruled on the propositions of law submitted by Defense Counsel. The Court granted propositions Numbers 1, 2, and 3, without qualifications, Numbers 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 17 were granted with qualifications and Numbers 11, 14 and 16 were rejected. Bills of

Exceptions were reserved by Defense Counsel as to the Court's rulings with regards to propositions No. 11, 13, 14, 16 and 17, all as noted by the stenographer. The Court reserved the right to amplify reasons assigned in Per Curiams which will be attached to the Bills of Exceptions. The Court, having heard arguments by the State and the Defense, and the rebuttal argument by the State, took this case under advisement until Wednesday, February 6, 1963, at 10:00 A.M.

Helen Sullivan, Minute Clerk.

February 6, 1963.

The Court, considering the testimony and the exhibits and having assigned reasons for judgment, rendered judgment of "Guilty as Charged". Motion for a New Trial and Motion in Arrest of Judgment filed by defense Counsel. The Court to notify the Clerk of Court of the date on which he will rule on said Motions.

Helen Sullivan, Minute Clerk.

[fol. 32] Feb. 28, 1963.

Motion for a New Trial and Motion in Arrest of Judgment overruled by the Court. Bills of Exceptions reserved, as noted by Stenographer. Defendant waived all legal delays and was thereupon sentenced to pay a fine of $1,000.00 or, in default of payment of said fine, to serve four (4) months in the Parish Prison. Bills of Exceptions No. 1, No. 2, No. 3, No. 4, No. 6, No. 8, No. 9, No. 10, No. 11, No. 15, No. 16, No. 17, No. 18, No. 20, No. 21, No. 22, No. 23, No. 24, No. 25 and No. 26, with Per Curiams attached thereon, were filed. Motion for a suspensive appeal, filed by Defense Counsel, granted by the Court. Returnable date March 28, 1963. Defendant discharged on his bond in amount of $500.00 on his own recognizance.

Helen Sullivan, Minute Clerk.

[fol. 33]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

PETITION OF THE HONORABLE JUDGES OF THE CRIMINAL DISTRICT COURT TO THE HONORABLE JACK P. F. GREMILLION, ATTORNEY GENERAL, STATE OF LOUISIANA, BATON ROUGE, LOUISIANA—Filed November 13, 1962.

Malcolm V. O'Hara, George P. Platt, Edward A. Haggerty, Jr., Thomas M. Brahney, Jr., J. Bernard Cocke, Oliver Schulingkamp, Shirley G. Wimberly, and Bernard J. Bagert, each being a duly elected Judge of the Criminal District Court in and for the Parish of Orleans do hereby petition the Honorable Jack P. F. Gremillion, Attorney General, of the State of Louisiana, as follows:

I.

That the aforementioned Judges on Thursday, the 8th day of November, 1962 did cause to be executed with Edward A. Haggerty, Sr., Clerk of the Criminal District Court for the Parish of Orleans, an affidavit bearing Number 177-364 of the Criminal District Court, certified copy of which is hereto attached and made a part hereof, charging the District Attorney for the Parish of Orleans, Jim Garrison, with the crime of Defamation, which is set out in Article 14:47 of the Louisiana Revised Statutes;

II.

That thereafter and pursuant to the duties incumbent upon the Clerk of the Criminal District Court he did accept, record, and file in said office the aforementioned affidavit;

III.

That immediately after said affidavit was filed in the office of the Clerk of the Criminal District Court, the said Jim Garrison, District Attorney for the Parish of Orleans, through his First Assistant District Attorney, Mr. Frank Klein, did dismiss the said affidavit which dismissal is evidenced by the inscription on the face thereof; and in addi-

[fol. 34] tion thereto did appear before said George P. Platt, Judge of Section "B", and on the same day moved in open court for the recordation in the minutes of the dismissal of the said affidavit all of which is evidenced by a certified copy of the motion attached hereto and made a part hereof;

IV.

That the said dismissal of your petitioners' affidavit by the said Jim Garrison has had the effect of denying your petitioners their day in court.

Additionally petitioners allege that in view of the serious nature of the unfounded complaints lodged against petitioners by Jim Garrison in the public press that the interest of the State and the people at large demand that the matter be heard publicly in the trial of the case.

Petitioners allege that such defamatory utterances strike at the very heart of the entire judicial system as well as representative democratic government and is therefore of the greatest public concern.

V.

Article 7, Section 56 of the Constitution of Louisiana, 1921, reads in part as follows:

"• • • They (attorney general and his assistants), or one of them, shall attend to, and have charge of all legal matters in which the State has an interest, or to which the State is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the State. They shall exercise supervision over the several district attorneys throughout the State, and perform all other duties imposed by law." • • •

[fol. 35] L.S.A.—R.S. 15:23 reads as follows:

"The attorney-general and his assistants shall have power and authority to institute and prosecute, or to intervene in any proceeding, civil or criminal, as they

may deem necessary for the assertion or protection of the rights and interests of the State; and furthermore, the attorney-general shall exercise supervision over all of the district attorneys throughout the state and shall represent the state in criminal cases on appeal."

VI.

That the offense with which the said Jim Garrison was charged by your petitioners has its jurisdiction in the Parish of Orleans of which the said Jim Garrison is the District Attorney.

That the interest of public justice will be served by the Attorney General taking charge of this prosecution under the aforesaid provisions of the Constitution and statutory law.

Therefore Your Petitioners considering the foregoing allegations and the applicable law, hereby direct, authorize and empower the Honorable Jack P. F. Gremillion, Attorney General for the State of Louisiana to comply with the Constitutional and statutory mandates cited herein, and to proceed with the prosecution of the said Jim Garrison for the crime of Defamation, all in accordance with his oath of office and the Constitution and laws of the State of Louisiana.

New Orleans, Louisiana, 12th day of November, 1962.

Malcolm V. O'Hara; George P. Platt; Edward A. [fol. 36] Haggerty, Jr.; Thos M. Brahney, Jr.; J. Bernard Cocke; Oliver P. Schulingkamp; Shirley G. Wimberly; Bernard J. Bagert.

CERTIFICATE OF SERVICE (omitted in printing).

NOTE: The certified copy of the affidavit, together with the Motion to Dismiss Affidavit, in Case No. 177-364, referred to in the above and foregoing Motion of the Honorable Judges of the Criminal District Court to the Honorable Jack P. F. Gremillion, Attorney General, is annexed hereto and contained in Exhibit Envelope No. 1.

[fol. 37] [File endorsement omitted]

[fol. 38] IN SUPREME COURT OF LOUISIANA

Filed November 13, 1962

V. J. Courville, Clerk.

Filed Nov. 14, 1962
Clerk's Office, Criminal
District Court

Dan B. Haggerty, Chief Clerk.

ORDER APPOINTING THE HONORABLE WILLIAM H. PONDER AS JUDGE AD HOC—November 13, 1962

Considering the above petition,

It Is Ordered by the court that the Honorable William H. Ponder, Judge of the Eleventh District Court, composed of the parishes of DeSoto and Sabine, be, and he is hereby, appointed, authorized, and directed to sit as Judge ad hoc for the Criminal District Court for the Parish of Orleans, in case No. 177-418 of the docket of the Criminal District Court for the Parish of Orleans, entitled State of Louisiana versus Jim Garrison, and to do and perform all necessary judicial functions in relation thereto:

It Is Further Ordered that this order shall in no way deprive the Honorable William H. Ponder of the authority to perform any and all functions that he may have occasion to perform as judge of the Eleventh Judicial District, or as a judge of any court to which he may previously have been assigned by any order of this court.

This order is effective immediately, and a copy thereof is to be served not only upon the said Judge William H. Ponder, which shall be his authority to act therein, but also upon the clerk of the Criminal District Court for the Parish of Orleans, and the clerks of the respective courts over which Judge Ponder presides in the Eleventh Judicial District.

Jno B. Fournet, Chief Justice of the Supreme Court of the State of Louisiana.

New Orleans, Louisiana
November 13, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 39] CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION OF ATTORNEY GENERAL TO RECUSE JIM GARRISON—November 13, 1962

On motion of Jack P. F. Gremillion, Attorney General, duly elected, qualified, and acting Attorney General for the State of Louisiana, and on suggesting to the Court that the defendant herein is the duly elected District Attorney for the Parish of Orleans and has a personal interest adverse to that of the prosecution,

It is ordered by the Court that the said Jim Garrison, District Attorney for the Parish of Orleans, do show cause on the day of why he should not be recused.

....., Judge ad hoc, Criminal District Court for the Parish of Orleans, State of Louisiana.

New Orleans, Louisiana
13th day of November, 1962

[File endorsement omitted]

[fol. 40] IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

INFORMATION—November 13, 1962

Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be informed that one Jim Garrison

late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section "B", Criminal District Court for the Parish of Orleans and the presiding judge thereof, and one Malcolm V. O'Hara, Judge of Section "A" of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section "C", Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section "D" of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section "E", Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section "F", Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section "G", Criminal District Court for the Parish of [fol. 41] Orleans, and Bernard J. Bagert, Judge of Section "H", Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item, an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit:

"TEXT OF GARRISON STAND ON JUDGES

"The statement by District Attorney Jim Garrison on his feud with the criminal district court judges follows:

"'Apparently the judges have called in all their reserves. (A reference to the joint meeting of all criminal court judges today.)

"'Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge (William J.) O'Hara's statement.

"'I will cite some glowing examples of misrepresentation of facts.

"'First of all is the attempt made to counterattack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison.

"'Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish Prison was vastly overcrowded the day we were sworn in.

"'There was not only a backlog of untried cases then . . . there has been for years.

[fol. 42] "'For example, the judge admits in his own statement that the (Leon D.) Hubert office inherited a backlog of 3500 cases. When we came into office in May, the backlog had risen to approximately 4600 cases.

"'inasmuch as the judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases.

"'District attorneys come and go every four years but the Judges and the backlog always seem to be here.

"'Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office.

"'We have prosecuted approximately 40 jury trials already—despite the fact that the winter term of the courts has just begun.

"'An objective study by an outside agency will reveal that this is at least as many trials as were held the last two years prior to our arrival.

"'To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts. The truth is that our investigators are with the trial assistant, invariably within arm's reach of the assistant, in full sight of the judge in every courtroom throughout every trial.

"'Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy.

"'As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations c B-drinking and other forms of vice.

"'This was accomplished by the judges tying the purse strings of the district attorney's fines and fees and informing me that no further money could be used in the investigation of any vice conditions.

"'The judges have specifically directed that the district attorney's office 'should not investigate anything' and informed me that they would allow me to use no further money from my large fines and fees—presently $40,000—for any form of vice investigation.

[fol. 43] "'In certain areas where we have spent borrowed money to keep operating against vice—in major handbook operations as well as in B-drinking cases—the judges have instructed me that this money will not be replaced out of fines and fees. I must pay this out of my own pocket.

"Again the message from the judges is clear. They do not want the district attorney's office to investigate anything.

"'Interestingly enough, had I let them stop me in August as they attempted to do, I would not have been able to keep the pressure on the Canal street B-joints, which ultimately resulted in the closing of all of them.

"'I succeeded in keeping up the pressure on these places, despite the judges' tying of the purse strings, by my personal loan from the Bank of New Orleans.

"'The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal street clip joints.
closed them, despite their (the judges') obvious attempts to block me, they now seek to slap the DA on the wrist by making him pay for this successful operation out of his pocket.

"'Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything.'

"This raises interesting questions about the racketeer influences on our eight vacationminded judges. This is a matter regarding which I will have more to say a little later.

"'To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert.

"'That was junked four years ago by the preceding DA's office and there was no comment by Judge O'Hara about its disappearance throughout the four years.

"'As a matter of fact, this office gives special attention to the preparation of trial and has adopted a number of the excellent trial preparations of the Hubert era.

"'To give a specific example, our office now is in the process of printing for distribution to every criminal defense attorney and every court the trial docket for the month to come.

[fol. 44] "'Our setting of particular cases on particular dates is so arrived at to avoid such conflicts as having cases in different courts by defendants or an attorney on the same day.

"'Interestingly enough, this program was abandoned by the previous DA's administration, and again there was not a word from Judge O'Hara.

"'O'Hara has now developed—subsequent to his retirement—a concern for the efficient operation of the trial dockets.

"'Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area.

"'So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for this breakdown of the prosecution office.

"'The first discernible interest on their part with regard to the district attorney's handling of vice cases arrived the past summer when it became apparent that this office was achieving success in its efforts to eliminate the B-drinking racket in New Orleans.'

"'This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the judges—that I could no longer spend any money out of fines and fees for anything.

"Since this was in August—there was not to be an en banc meeting until October when all the judges returned from their vacations—this would have had the effect of blocking our vice investigations. This is when I borrowed money from the bank and continued to investigate B-drinking in spite of the judges.

"'If the judges would show half as much interest in solving dangerous overcrowded conditions of the Par

ish Prison, and this overcrowding has been present for years not just the last few weeks, as they have shown in their successful attempts at completely blocking the anti-B-drinking operations of my office, the Parish Prison problem would be ended over night.

"The efficiency and dispatch with which the judges of the present court stopped my undercover investiga-[fol. 45] tions of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

"It is unfortunate that there is no comparable interest on their part with regard to the problem of inmates awaiting trial month after month in the Parish Prison.

"'It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation.

"'There are now approximately 520 prisoners awaiting trial out of a prison population of 758.

"'I think this is an outrageous condition which should be answered not by petulant words by the judges but by action—to immediately increase the number of trial days of this court so that the men can be brought to a speedy trial."

contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

Jack P. F. Gremillion, Attorney General for the State of Louisiana.

[fol. 46]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

No. 177-418

Section "C"

[Title omitted]

MOTION OF JIM GARRISON TO RECUSE THE HONORABLE WILLIAM H. PONDER, TRIAL JUDGE —Filed December 4, 1962

On Motion Of Jim Garrison, defendant herein, charged with the crime of Defamation, and on respectfully suggesting to this Honorable Court that the Honorable William H. Ponder, Trial Judge ad hoc, should be recused from presiding as such Trial Judge on the trial of your above named defendant for the following reasons, to-wit:

1.

That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.

2.

That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Four-

teenth Amendment, and that the appointment of the said Honorable William H. Ponder, under color of authority [fol. 47] of the said provisions of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect.

Wherefore, your defendant and mover respectfully prays that the Honorable William H. Ponder, Trial Judge ad hoc herein, recuse himself from any further consideration in this matter.

Jim Garrison, Defendant and Mover;

Donald V. Organ, Attorney for Defendant and Mover.

Duly sworn to by Jim Garrison, jurat omitted in printing.

[File endorsement omitted]

[fol. 48]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

APPLICATION FOR BILL OF PARTICULARS
—Filed December 4, 1962

Now Into This Honorable Court comes Jim Garrison, defendant, in the above entitled and numbered cause, and before arraignment pleads that he is unable to answer to the information, and pleads that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following, to-wit:

1.

What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

2.

What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

3.

Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

4.

If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the [fol. 49] State to be untrue.

Wherefore, your defendant prays that the State of Louisiana through the Honorable P. F. Jack Gremillion, the Attorney General, be ordered by the Court to furnish the said Bill of Particulars above requested, and that service of same be made upon your defendant.

And your defendant prays for all such other relief to which he is or may be entitled.

Jim Garrison, Defendant;

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Jim Garrison, jurat omitted in printing.

[fol. 50] Let The Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, be, and he is hereby ordered to furnish the defendant, Jim Garrison, the particulars requested in the foregoing application within ..... days from the date hereof.

New Orleans, Louisiana, this ..... day of ..... 1962.

.....
Judge

[File endorsement omitted]

[fol. 51]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

DEMURRER AND MOTION TO QUASH—Filed December 4, 1962

Now Into This Honorable Court comes Jim Garrison, defendant in the above entitled and numbered cause, and before arraignment, and protesting that he is not guilty of the offense set out in the Bill of Information herein, says that the said Information and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him, the said Jim Garrison, to answer thereto, for the following reasons, to-wit:

1.

That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, contains no allegations of fact which are defamatory, or which could through any reasonable interpretation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

2.

That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the state-

ment attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows [fol. 52] the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

3.

That to hold the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution.

Wherefore, the defendant prays judgment and that by the Court here he may be dismissed and discharged of the said Information.

Jim Garrison;

Donald V. Organ, Attorney for Defendant.

[fol. 53] *Duly sworn to by Jim Garrison, jurat omitted in printing.*

[File endorsement omitted]

[fol. 54]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR TRIAL BY JURY AND ORDER THEREON
—Filed December 5, 1962

Now Into Court through the undersigned counsel comes Jim Garrison, made defendant herein and without waiving or relinquishing any rights or relief sought under pleadings previously filed herein but on the contrary re-urging and reiterating all of the contentions contained in the said prior pleadings moves that the merits of this case be tried by jury and that this case, subject to a determination of the pleadings previously filed herein, be assigned for trial during the jury term in accordance with the rules of this Court for the following reasons, to wit:

I

That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

II

That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defen-
[fol. 55] dant and that the trial of this case without a jury would serve to deny to defendant due process of law under

the Sixth and Fourteenth Amendments of the United States Constitution.

Wherefore, the defendant prays that the Attorney General of the State of Louisiana be ordered to show cause on a date and at a time to be fixed by this Honorable Court why the merits of this case, subject to a determination of previous pleadings herein, should not be assigned for trial during the jury term of this Court and set down for trial by jury.

Jim Garrison;

Donald V. Organ, Attorney for Defendant.

[fol. 56] *Duly sworn to by Jim Garrison, jurat omitted in printing.*

ORDER

The foregoing motion and allegations contained therein considered, it is ordered that the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, be, and he is hereby ordered to show cause on the day of 1962, why this case should not be placed on the jury docket of this Court to be set down for trial by jury.

New Orleans, Louisiana
This ..... Day of ....., 1962.

.....
Judge

[File endorsement omitted]

[fol. 57]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO APPLICATION FOR BILL OF PARTICULARS —Filed December 11, 1962

And now into Court comes the State of Louisiana through its undersigned counsel, and in answer to the Bill of Particulars, respectfully shows:

I.

The State will rely upon the entire article as quoted in the Bill of Information.

II.

The State will rely upon the entire article as quoted in the Bill of Information.

III.

The State will contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

IV.

The entire expression and publication as quoted in the Bill of Information will be used as the basis on the trial as the alleged violation of the statute. The State will also prove the allegation of fact that the said Statement was made and published by the said defendant on the date set forth in the indictment.

Wherefore, The State prays that this Answer to the Bill of Particulars be held sufficient in law.

State of Louisiana, By: Jack P. F. Gremillion, Attorney General, State of Louisiana;

[fol. 58] M. E. Culligan, Assistant Attorney General;
John E. Jackson, Jr., Assistant Attorney General;
L. K. Clement, Jr., Assistant Attorney General;
Weldon A. Cousins, Assistant Attorney General;
John M. Currier, Assistant Attorney General;
Henry J. Roberts, Jr., Assistant Attorney General;
William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 59] IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO DEMURRER AND MOTION TO QUASH—
Filed December 11, 1962

There has been filed herein a Demurrer and Motion to Quash.

The context of the document is actually a defense or plea in mitigation and presents no question of law that could be disposed of at this hearing. The fact that the defendant may have a good defense is not sufficient grounds to quash an indictment.

R.S. 15:286 provides:

> "Any defect apparent upon the face of the indictment, or any defect fatal to the validity of the proceedings may be set up in a motion to quash the indictment, whether such fatal defect be one apparent upon the face of the record, or be such as can be established only by the production of evidence."

Generally speaking, where a bill of information fully informs the accused of the nature and cause of the accusa-

tion, it cannot be deemed to be defective. The Louisiana Supreme Court, in the case of State versus Masino, 214 La. 744, 38 So. 2d 623 (1949) sets forth the constitutional requirements a bill of information would have to meet, and we quote:

> "Does this indictment inform the court what offense is being charged, so that the proof will be restricted solely to the crime charged; and is the indictment sufficient on its face to support a plea of former jeopardy?"

The bill of information filed herein is what is commonly referred to as a long form indictment or information which follows the language of the statute (R.S. 14:47) and [fol. 60] the specific acts on which the charge is based are set forth in the bill of information.

It is submitted that the bill of information is proper on its face and the motion to quash does not allege any defects: Therefore, we are treating the document filed herein and entitled, "Demurrer and Motion to Quash" also as a demurrer.

Although we will answer the allegations specifically, it is appropriate to point out that there is no allegation that the statute in question (R.S. 14:47) is unconstitutional vel non and that the only allegation anywise dealing with a constitutional question is contained in Paragraph 3 of accused's "Demurrer and Motion to Quash."

I.

In support of Paragraph I of this document, the Memorandum of Authorities for the defendant in support thereof cites Wharton's Criminal Law and Procedure v. II, P. 70, Section 884 (1957), and while we agree with the general proposition that in a prosecution of criminal defamation that the words contained in the statement, which is the basis of the prosecution, must be given an ordinary meaning, determined from an examination of the statement as a whole, in light of the surrounding circumstances, we fail to see where this statement offers the defendant any sol-

ace. However, it is noted that in Section 885 of this text, the author had the following to say:

> "Either under the common law or by virtue of statute, a great variety of statements have been held to be criminally defamatory, such as those imputing adultery, bribery, commission of a crime, conviction of crime, criminal misconduct in office, dishonesty, drunkenness, graft, hypocrisy, incompetency in one's [fol. 61] trade or profession, insolvency, financial irresponsibility, misconduct as a juror, seduction, or unchastity. It has also been suggested that sending a letter to a married woman, soliciting sexual intercourse, may constitute a criminal libel.
>
> Many enactments denounce as a libel any publication that reflects upon the solvency of a bank or a corporation.
>
> Intemperate reflections on the proceedings of courts of justice, when bringing public justice into contempt, are libelous. It is also libelous to charge a judge or jury with malice or corruption. It is libelous even to publish a correct account of judicial proceedings if accompanied with comments and insinuations tending to asperge a man's character. It is not libelous, however, if the report is fair and accurate."
>
> See also Yankwich, "It's Libel or Contempt if you Print it." P. 405-408.

Defendant contends that the bill of information as written does not charge an offense under Article 285, Code of Criminal Procedure, however, we urge that a complete reading of the text of defendant's statement, as set forth in the bill of information in its entirety, can lead only to one conclusion, that is, that such statement constitutes a violation of R.S. 14:47.

II.

In Paragraph II of defendant's Demurrer and Motion to Quash, he apparently claims a qualified privilege under Article 49 of the Criminal Code and while we think this is

undoubtedly a matter of defense, we have no quarrel with the statement in his memorandum of authorities that State versus O'Donnell, 141 La. 887, 75 So. 811, adequately and correctly states the law applicable in the instant case. It will be noted that in the O'Donnell case, the Court stated that comment on the well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. This in essence is what the defendant is accused of, i.e., the expression and [fol. 62] publication of untrue statements as distinguished from the comment on admitted facts. In fact, the O'Donnell case is one of the Louisiana cases which was incorporated into the provisions of R.S. 14:47 as can be seen from the reporter's note contained thereunder.

Any special circumstances, surroundings or conditions which would afford defendant relief under Article 49 of the Code of Criminal Procedure would be a question of proof that would have to be established at the time of trial by the introduction of evidence in the usual manner.

III.

The defendant contends that were he to be convicted of defamation for the statements set out in the bill of information filed herein, he would be deprived of his rights to freedom of expression guaranteed by Article 1, Section 3 of the Louisiana Constitution, as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all such subjects, *being responsible for the abuse of that liberty.*" (Emphasis ours.)

Also by the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

First, we would like to point out that all of the cases cited by defendant in support of this proposition are contempt cases which are clearly distinguishable from a criminal defamation proceeding.

Under both the state and federal jurisprudence, the law is clear that libelous utterances are not within the area of constitutionally protected speech.

Roth v. U. S. Cal. and N.Y. 77 Supreme Court 1304, 354 U.S. 476; Kvos, Inc. v. Associated Press 13 Fed. Supp. 910. [fol. 63] Madison v. Bolton, 234 La. 997, 102 So. 2d 443 (See Footnote 6), Deshotel v. Thistlethwaite 240 La. 12, 121 So. 2d 222, Kennedy v. Item Co., Inc. 213 La. 347, 34 So 2d 886.

Any special circumstances or facts that would take defendant's utterances out from under the general provision of law cited above would have to be facts adduced at the trial and cannot properly be urged on a Demurrer or Motion to Quash.

The record itself as presently constituted is devoid of any facts or circumstances that would make the above rule of law inapplicable and if the defendant intends to present such facts or show such circumstances, the proper time and place would be at the trial on the merits of this matter.

To summarize, our appreciation of the law is that the bill of information does not show on its face that he is entitled to a qualified or absolute privilege and for this reason, a Motion to Quash or Demurrer is not applicable. A Motion to Quash or Demurrer would lie only if the privilege asserted by the defendant was apparent on the face of the record and the facts were not in dispute as then only a question of law would be before the court for determination.

State of Louisiana, By: Jack P. F. Gremillion; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; L. K. [fol. 64] Clement, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; John M. Currier, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 65]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

ANSWER TO MOTION FOR TRIAL BY JURY—
Filed December 11, 1962

Now into Court comes the State of Louisiana through undersigned counsel and in answer to defendant's motion for Trial by Jury, respectfully shows:

1.

Article 47 is a misdemeanor and as stated by defendant's counsel, all misdemeanors under Louisiana constitutional provision are triable by the Judge alone.

Such provision does not violate the 6th or 14th Amendment of the United States Constitution as he has no State constitutional right to a jury trial nor any Federal constitutional right to a trial by Jury of a misdemeanor in a State Court.

2.

There is no constitutional (State or Federal) right to a trial by Jury of a misdemeanor in a State Court. All constitutional rights of defendant can be urged by the defendant and tried by the Judge alone, and will not deny defendant due process of law under the sixth and fourteenth amendments to the United States Constitution.

Wherefore, the State prays that defendant's motion be dismissed and this case be tried by the Judge without any jury.

State of Louisiana, By Jack P. F. Gremillion, Attor-
[fol. 66] ney General; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; John M. Currier, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General.

[File endorsement omitted]

[fol. 67]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MEMORANDUM IN SUPPORT OF ANSWER FILED TO DEFENDANT'S MOTION FOR TRIAL BY JURY—Filed December 11, 1962

This motion was filed in this Court on December 5th although the trial judge had set the latest date for filing of any technical pleadings as December 4th the fact of which the defendant was fully apprised in person and representing himself in proper persona.

The right of freedom of speech is not an absolute.

The 6th amendment has no application to a State prosecution and does not entitle anyone to a jury trial in a State Court of a misdemeanor.

See *State* v. *Kraft*, 214 La. 351, 37 So. 2d 815, 816.

The 6th amendment is not encompassed in the 14th amendment and the 14th amendment has no application to prosecutions in State Courts of misdemeanors nor has there ever been any holding that a state must grant jury trials.

In *Hurtado* v. *California*, 110 U.S. 516, 28 L.Ed. 232, 4 Sup. Ct. Rep. 111, 292, it was held "due process of law" in the 14th amendment did not require an indictment by a Grand Jury in a prosecution by a State for murder.

In *Maxwell* v. *Dow*, 176 U.S. 581, 44 L. Ed. 597, 20 Sup. Ct. Rep. 448, 494, it was also held, the trial of a person in a State Court, accused as a criminal, by a jury of only eight persons instead of 12, did not deprive the convicted criminal [fol. 68] of due process. See also *Brown* v. *New Jersey*, 175 U.S. 172, 44 L. Ed. 119, 20 Sup. Ct. Rep. 77.

In all these cases it was held that the several rights mentioned in them were not those fundamental ones which were protected by the Federal Constitution, when presented for review under State prosecutions.

That the 6th amendment does not apply to State Courts was held in *West* v. *Louisiana*, 194 U.S. 258, 264, 48 L. Ed. 956 and in *State* v. *Kraft*, 214 La. 351, 37 So. 2d 815, 816, the Louisiana Supreme Court held:

"Amendments V and VI of the Constitution of the United States, are applicable only to prosecutions in a Federal Court, and not to prosecutions in a State Court."

Respectfully submitted,

State of Louisiana, By Jack P. F. Gremillion, Attorney General, State of Louisiana; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General; Weldon A. Cousins, Assistant Attorney General; Henry J. Roberts, Jr., Assistant Attorney General; William P. Schuler, Assistant Attorney General; L. K. Clement, Jr., Assistant Attorney General; John M. Currier, Assistant Attorney General.

[File endorsement omitted]

[fol. 69]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

Proposed Propositions of Law Nos. 1-17

PROPOSITION OF LAW NO. 1

The accused is presumed to be innocent in every criminal proceeding.

Granted .....

Rejected .....

.....

Judge

[fol. 70]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 2

In order to convict the accused of criminal defamation the trial judge must be convinced of his guilt beyond a reasonable doubt.

Granted .....

Rejected .....

.....

Judge

[fol. 71]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 3

In prosecutions for criminal defamation, the words contained in the statement which is the basis of the prosecution must be given their ordinary meaning, determined from an examination of the statement as a whole, in the light of the surrounding circumstances.

Granted .....

Rejected .....

.....

Judge

[fol. 72]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 4

Where the defamatory statement is a comment upon the conduct of a person in respect to public affairs and is made in the reasonable belief of its truth, the statement is qualifiedly privileged, and to obtain a conviction under these circumstances the State must prove actual malice on the part of the accused when he made the statement, regardless of its truth or falsity. Art. 49, La. Crim. Code.

Granted .....

Rejected .....

.....

Judge

[fol. 73]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 5

Where the facts in a criminal defamation case are not disputed, the question of privilege is purely one of law. *State* v. *Lambert,* 188 La. 968, 178 So. 508.

Granted .....

Rejected .....

.....

Judge

[fol. 74]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 6

Malice means hatred, ill-will, or hostility to another. It characterizes all acts done with an evil disposition, a wrong and unlawful motive and purpose, the wilful doing of an injurious act without lawful excuse. Clark and Marshall, Crimes, p. 76, sec. 48 (1952).

Granted .....

Rejected .....

.....

Judge

[fol. 75]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 7

To prove actual malice the State must show, by extrinsic evidence of personal ill feeling or by intrinsic evidence such as the exaggerated language, mode and extent of the publication, that the accused acted through hatred, ill will, and a wanton desire to injure. *State* v. *Lambert*, 188 La. 968, 178 So. 508.

Granted .....

Rejected .....

.....

Judge

[fol. 76]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 8

A comment is the expression of the judgment passed upon certain alleged facts by one who has applied his mind to them, and who, while so commenting, assumes that such allegations of fact are true. Where the accused sets out the facts of a situation correctly, and then draws a derogatory inference from those facts, stating it as his inference, this inference is a comment and is qualifiedly privileged. *State* v. *O'Donnell,* 141 La. 887, 75 So. 811.

Granted .....

Rejected .....

.....

Judge

[fol. 77]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 9

Fair comment in the law of defamation is a comment which is either true; or which, if false, expressed the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds. Clark and Marshall, Crimes, p. 628, sec. 434 (1952).

Granted .....

Rejected .....

.....

Judge

[fol. 78]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 10

Public officials may be regarded as inviting comment by any member of the public, and a right of fair comment exists, for which there is no criminal liability, as long as the critic acts in good faith, limits himself to a comment on the true facts, confines himself to criticism of that matter in which the public is interested, and confines the publication of his criticism to the area in which the defamed person has made his actions public. Wharton's Criminal Law and Procedure, v. II, p. 770, sec. 899 (Anderson, 1957).

Granted .....

Rejected .....

.....

Judge

[fol. 79]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 11

Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec. 795 (1946); see *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So. 2d 222.

Granted .....

Rejected .....

.....

Judge

[fol. 80]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 12

In Louisiana the district attorney is the elected representative of the public and it is his duty to inquire into the fact of the commission of crimes. Arts. 17.1, 18, La. Code Crim. Proc.

Granted .....

Rejected .....

.....

Judge

[fol. 81]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 13

Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional

Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 82]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 14

The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 83]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 15

To supply the public need for information and education with respect to the significant issues of the times, a broad conception of the First Amendment to the United States Constitution is necessary. Freedom of discussion must

embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period. *Wood* v. *Georgia*, 370 U.S. 375, quoting from *Thornhill* v. *Alabama*, 310 U.S. 88.

Granted .....

Rejected .....

.....

Judge

[fol. 84]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 16

Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the right of free speech. *Wood* v. *Georgia*, 370 U.S. 375.

Granted .....

Rejected .....

.....

Judge

[fol. 85]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PROPOSITION OF LAW NO. 17

Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused.

Granted .....

Rejected .....

.....

Judge

[fol. 86]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION IN ARREST OF JUDGMENT—
Filed February 6, 1963

And now, after judgment against the said Jim Garrison, and before sentence, comes the said Jim Garrison, defendant herein, through undersigned counsel and moves the Court here to arrest judgment herein and not to pronounce the same because of manifest error in the record appearing, to wit:

That the entire proceedings against the defendant are null and void for the reasons that the statutes under which the bill of information is laid is unconstitutional and null and void and in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech.

Wherefore, the defendant prays that, after due proceedings had, the judgment of the Court herein be set aside and the defendant be discharged, and for all general and equitable relief.

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Donald V. Organ, jurat omitted in printing.

[fol. 87] [File endorsement omitted]

[fol. 88]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR A NEW TRIAL—Filed February 6, 1963

Now into this Honorable Court comes Jim Garrison, defendant herein, through undersigned counsel, and moves the Court that the judgment of the Court herein be set aside and a new trial ordered for the following reasons, to wit:

I

That the verdict herein is contrary to the law and the evidence.

II

That there is no evidence whatsoever in the record of this case to support the judgment of the Court.

III

That each of the bills of exception reserved during the trial of this case and during preliminary proceedings show error committed to the prejudice of the accused.

IV

The Court erred in denying the defendant's application for a bill of particulars and the defendant was materially hindered in the preparation of his case and that his defense was materially prejudiced thereby.

V

The Court erred in failing to recuse itself from hearing this cause on its merits.

VI

The Court erred in failing to grant the defendant's request for trial by jury.

[fol. 89]

VII

The Court erred in failing to grant the defendant's motion to quash.

VIII

The Court erred to the prejudice of the accused in permitting witnesses to testify as to statements of the defendant other than those set forth in the bill of information herein.

IX

The Court erred to the prejudice of the accused in permitting the accusing judges and others to testify as to hearsay statements of other persons, whose identities were unreveaked and unknown, for the alleged purpose of showing that said judges were subjected to hatred and ridicule as a result of the statements of the defendant; that the said testimony was incompetent for this purpose and that the defendant was prejudiced thereby.

X

The Court erred in not accepting all propositions of law as submitted to the Court by the defense; that each of the said propositions was a correct statement of the law and should have been accepted without qualification.

Wherefore, the defendant prays that after due proceedings had, the judgment of the Court herein be set aside and a new trial granted herein, and for all general and equitable relief.

Donald V. Organ, Attorney for Defendant.

Duly sworn to by Donald V. Organ, jurat omitted in printing.

[fol. 90] [File endorsement omitted]

[fol. 91]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

MOTION FOR APPEAL TO SUPREME COURT OF LOUISIANA AND ORDER THEREON—Filed February 28, 1963

And Now Into Open Court comes the defendant, Jim Garrison, through undersigned counsel, and

On Suggesting To The Court That the record herein shows error to this prejudice, and that he is desirous of appealing to the Honorable, The Supreme Court of the State of Louisiana,

Wherefore, defendant prays that he be granted a suspensive appeal to the Honorable, The Supreme Court of the State of Louisiana returnable in accordance with law.

Donald V. Organ, Attorney for Defendant.

ORDER

Let a suspensive appeal be granted in this case on behalf of the defendant, Jim Garrison, to the Supreme Court of the State of Louisiana, and let the return date be the 28th day of March, 1963, and pending said suspensive appeal, let the defendant be released on bond in the amount of $500.00

on his own recognizance. New Orleans, Louisiana, 28th day of February, 1963, at 2:08 P.M.

Wm. H. Ponder, Judge.

[File endorsement omitted]

[fol. 92]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

Bills of Exception, Nos. 1-4, 6, 8-11, 15-18, 20-26, With Per Curiams—Filed February 28, 1963

BILL OF EXCEPTION NUMBER ONE

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Motion to Recuse, which motion reads as follows:

"On Motion Of Jim Garrison, defendant herein, charged with the crime of Defamation, and on respectfully suggesting to this Honorable Court that the Honorable William H. Ponder, Trial Judge ad hoc, should be recused from presiding as such Trial Judge on the trial of your above named defendant for the following reasons, to-wit:

1.

"That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana Judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had

and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.

2.

"That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Fourteenth Amendment, and that the appointment of the said Honorable William H. Ponder, under color of authority of the said provisions of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect.

"Wherefore, your defendant and mover respectfully prays that the Honorable William H. Ponder, Trial Judge ad hoc herein, recuse himself from any further consideration in this matter."

[fol. 93] and,

Whereupon, the Court having denied the Motion to Recuse, your defendant, by his counsel, did then and there in open Court reserve this Bill of Exception making part thereof the Motion to Recuse, the ruling and decision of the Court and the reasons given for same, and the entire record of the case.

and,

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 94]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER ONE

This bill of exception was reserved to denying a motion to recuse filed by the defendant herein.

I will note here that the allegations set forth in paragraph one of the motion and bill of exception are not correct statements of what was said in the statement for the press by the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, as his statement was that the integrity of the judicial system was involved. I find nothing in the statement that "announced his intention of making the integrity of the Louisiana Judiciary an issue in the trial thereof," and no proof was offered that he made this remark.

LSA-R.S. 15:303 sets forth the grounds for recusation of a judge in a criminal case. None of those grounds could possibly be considered other than there might be a vague implication in the allegation that as a result the appointed judge would be an interested party in the case. However, this is simply based on a statement of counsel for the State and could have no binding effect as to the truth thereof on the appointed judge. It is pure sophistry to try to draw this conclusion. However, it is well established in our law, as set forth in State v. Laborde, 38 So. 2d 371, 375, as follows:

> "In State v. Doucet, 199 La. 276, 5 So. 2d 894, 897, we said:
>
> "The jurisprudence of this State is well settled that if the allegations of the petition for the recusation of a judge are mere general statements of conclusions that the judge is prejudiced and biased against or hostile to

[fol. 95] the defendant because of personal or political reasons, or that if the petition does state facts which, if proved, would not constitute a legal ground for recusation, the judge who is sought to be recused may himself overrule the motion and need not refer it to another judge for trial. (Citing a long number of cases.)

Therefore, I considered paragraph one of motion to recuse without merit.

Under paragraph two of the motion and bill of exception, the Constitution of the State of Louisiana gives authority to the Supreme Court of Louisiana for the appointment to act as Judge ad hoc in this case. Further, this court has no supervisory or appellate jurisdiction over an order of the Supreme Court of the State of Louisiana, but the reverse is true, and this appointment may not be collaterally attacked, as the proper procedure and proper forum would be a direct action in the Supreme Court of the State of Louisiana. I do not find that the constitutional and statutory provisions of the State of Louisiana authorizing the appointment by the Louisiana State Supreme Court of a Judge Ad Hoc to try this case would be unconstitutional, null and void and as violative of the due process provisions of the Fourteenth Amendment.

In view of the above, the motion to recuse was overruled. Therefore, I sign this bill as explained and subject to this per curiam attached.

Thus Done And Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 96]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWO

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file an Application for Bill of Particulars, which Application for Bill of Particulars read as follows:

"NOW INTO THIS HONORABLE COURT comes Jim Garrison defendant, in the above entitled and numbered cause, and before arraignment pleads that he is unable to answer to the Information, and pleads that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following, to-wit:

1.

"What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

2.

"What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

3.

"Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

4.

"If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the State to be untrue.

"WHEREFORE, your defendant prays that the State of Louisiana through the Honorable P. F. Jack Gremillion, the Attorney General, be ordered by the Court to furnish the said Bill of Particulars above requested, and that services of same be made upon your defendant.

[fol. 97] "And your defendant prays for all such other relief to which he is or may be entitled."

and

Whereupon the Court having denied the Application for Bill of Particulars in its entirety, your defendant, by his counsel, did then and there in open court reserve this Bill of Exception, making part thereof the Application for Bill of Particulars, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error in the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of , 1963.

..... Judge.

[fol. 98]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWO

The motion for a Bill of Particulars herein was overruled, from which ruling the defendant reserved this bill of exception. This bill is predicated upon a request for information as requested in the motion which would require the State to break down the statement as a whole and take certain portions thereof out of context.

It is not necessary in a Bill of Information or Bill of Indictment to set forth solely evidentiary or probative facts that involve a trial on the merits. The question of sufficiency of an indictment or Bill of Information is fully discussed in the case of State v. Smith, 146 So. 2d 152. See also LSA-R.S. 15:288, under which I exercised my discretion, and cases thereunder.

Further, it was urged by the defendant in his *motion to quash*, a statement of law with which I agree, that:

> "It is well settled that in prosecutions for criminal defamation, the words contained in the statement which is the basis of the prosecution must be given their ordinary meaning, determined from an examination of the statement as a whole, in the light of the surrounding circumstances." See Wharton's Criminal Law and Procedure, V. II, p. 750, Section 884 (1957).

Also, in the case of State v. Lambert, 188 La. 968, 178 So. 508 (prosecution for libel) it was held that in analyzing a document and determining its legal effect, the same must be considered as a whole. However, in this case the State has filed an answer to the Bill of Particulars stating that it re-
[fol. 99] lies upon the entire article as quoted in the Bill of Information, and that the statement set forth in the Bill of Information constitutes malice in law and malice in fact.

the State answered that the entire expression and publication as quoted in the Bill of Information would be used as a basis on the trial as the alleged violation of the statute.

Therefore, the motion for Bill of Particulars was overruled in view of the above authorities and the answer to the Bill of Particulars filed by the State, which I deemed sufficient. I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 100]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER THREE

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Demurrer and Motion to Quash, which Demurrer and Motion to Quash reads as follows:

"NOW INTO THIS HONORABLE COURT comes Jim Garrison, defendant in the above entitled and numbered cause, and before arraignment, and protesting that he is not guilty of the offense set out in the Bill of Information herein, says that the said Information and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him, the said Jim Garrison, to answer thereto, for the following reasons, to-wit:

1.

"That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, con-

tains no allegations of fact which are defamatory, or which could, through any reasonable interpretation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

2.

"That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the statement attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

3.

"That to told the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof [fol. 101] the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution.

"WHEREFORE, the defendant prays judgment and that by the Court here he may be dismissed and discharged of the said Information."

and,

Whereupon, the Court having overruled the Demurrer and Motion to Quash in its entirety, your defendant, by his

counsel, did then and there in open Court reserve this Bill of Exception, making part thereof the Demurrer and Motion to Quash, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this . . day of , 1963.

..... Judge.

[File endorsement omitted]

[fol. 102]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER THREE

This bill of exception was reserved to the overruling of demurrer and motion to quash. The demurrer and motion to quash consisted of three parts; the first of which is that the statement set forth in the Bill of Information was not defamatory such as would bring it within the statutory provisions of LSA-R.S. 14:47. I did not feel that this was properly presented on a motion to quash, as qualified privilege and malice were involved, which would require evidence, particularly also on the truth or falsity thereof, and it should be determined on the trial of the case; and upon trial I held that it was defamatory. It is only when the facts are not disputed that it becomes a question of law alone. State v. Lambert, 178 So. 508.

The second contention of the defendant in this motion was that he was entitled to a qualified privilege in that the

statement was a comment on the conduct of persons in respect to public affairs. However, I considered it also contained statements of fact, rather than criticism or comments on admitted facts. The defendant relies upon the case of State v. O'Donnell, 141 La. 887, in his memorandum brief. However, in that case the court, in quoting from Odgers on Libel (5th Ed.) p. 197, stated in part:

> "Comment on well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. There is no doubt that the public acts of a public man are lawfully made the subject of fair comment or criticism, not only by the press, but by all members of the public. But the distinction cannot be [fol. 103] too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct."

Also, the defendant would necessarily have to have a reasonable belief as to the truth of his comment as set forth in LSA-R.S. 14:49. Also, it is well established that proof of actual malice may destroy a qualified privilege. Therefore, this could only be determined after trial, and was not such as would authorize the sustaining of a motion to quash.

The third contention in this motion is that LSA-R.S. 14:47 defining the crime of defamation violates the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of the freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution. This was a proposition of law with which I did not agree.

Therefore, the motion to quash was overruled and the bill of exception was reserved to the ruling of the court, and I

sign this bill of exception subject to per curiam explaining it attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 104]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER FOUR

Be It Remembered That before the trial of the above numbered and entitled cause, the defendant, by his counsel, on December 17, 1962, did file a Motion for Trial by Jury, which Motion for Trial by Jury reads as follows:

"Now Into Court through the undersigned counsel comes Jim Garrison, made defendant herein and without waiving or relinquishing any rights or relief sought under pleadings previously filed herein but on the contrary re-urging and reiterating all of the contentions contained in the said prior pleadings moves that the merits of this case be tried by jury and that this case, subject to a determination of the pleadings previously filed herein, be assigned for trial during the jury term in accordance with the rules of this Court for the following reasons, to-wit:

I

"That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

II

"That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defendant and that the trial of this case without jury would serve to deny to defendant due process of law under the Sixth and Fourteenth Amendments of the United States Constitution.

"Wherefore, the defendant prays that the Attorney General of the State of Louisiana be ordered to show cause on a date and at a time to be fixed by this Honorable [fol. 105] Court why the merits of this case, subject to a determination of previous pleadings herein, should not be assigned for trial during the jury term of this Court and set down for trial by jury."

and,

Whereupon, the Court having denied the Motion for Trial by Jury in its entirety, your defendant, by his counsel, did then and there in open Court reserve this Bill of Exception making part thereof the Motion for Trial by Jury, the answer of the State thereto, the ruling of the Court and the entire record in the case.

and

There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly this day of 1963.

.....

Judge

[File endorsement omitted]

[fol. 106]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER FOUR

This bill of exception was reserved to overruling a motion for a jury trial in this case. Counsel for defendant cites a number of cases of other jurisdictions, but most all, if not all of them, have to do with contempt proceedings rather than actions in defamation.

The trial of this case is governed by the provisions of Article 7, Section 41, of the Constitution of the State of Louisiana of 1921, which provides:

> " * * * All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

I do not consider this article violative of the Sixth and Fourteenth Amendments of the United States Constitution; nor would it deny defendant due process of law under said amendments.

Also, in the case of State v. Livaudais, 161 La. 886, it was held that since the punishment provided was imprisonment without hard labor, the case must be tried by the judge, without a jury.

I find no cases in Louisiana holding that the defendant has a right to demand a trial by jury in a case involving a misdemeanor.

[fol. 107] Therefore, this motion for a jury trial was overruled by me, and to which ruling the defendant reserved a bill of exception. I hereby sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 108]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SIX

Be It Remembered That upon the trial of this cause the State, in putting on its evidence, called as a witness one Arthur Roane, who after being duly sworn, was asked by the prosecutor if he had made a report of the defendant's statement to his, the witness's, newspaper.

And, Whereupon, the counsel for the defense objected to the question on the grounds that the newspaper referred to was The Times Picayune and that the Bill of Information charged the defendant with defamation resulting from the publication of defendant's statement in the New Orleans States-Item, but the Court overruled the defendant's objection and permitted the witness to testify that portions of the statement were reported to his paper, to-wit: The Times Picayune, to which ruling and decision of the Court in permitting this testimony, the defendant, by his counsel, then and there excepted, making part thereof the question of counsel for the State, the objection of counsel for the defense, the ruling of the Court and the entire testimony in the case; that the said question, objection and ruling are set forth on pages 34 through 36, inclusive, of the transcript, which said pages are attached hereto and made part hereof by reference as though fully copies herein in extenso.

[fol. 109] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

.....

Judge

[File endorsement omitted]

[fol. 110]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SIX

This bill of exception was reserved to the ruling of the court with reference to a publication of the defamatory statement in that portions of the defamatory statement were published in the Times-Picayune. A partial explanation at the time of my ruling on the matter was given, and in addition thereto the Bill of Information charges the defendant with publishing and expressing the defamatory statement "in the public press of the City of New Orleans to persons other than the persons defamed." I was of the opinion that it was admissible to show malice, and restricted to that alone, that the same statement had been given publicity and notoriety in other publications, and to show the intent of actual malice, particularly in view of the fact that a qualified privilege had been pleaded by the defendant, and it was necessary for the State to prove actual malice, whether the statement was false or true, in order to destroy the qualified privilege if any existed. This evidence was not admitted for the purpose of constituting another crime by the publication.

It might be noted here that although counsel for defendant relies only on the ruling on pages 34 through 36,

inclusive, of the transcript of evidence, that the complete ruling goes through page 37.

Counsel relied upon the case of State v. Alexander, 216 La. 932, 45 So. 2d 83, which case I do not believe apposite here. In that case the crime charged did not involve one of [fol. 111] intent. Under the provisions of LSA-R.S. 14:47, the defendant is charged with "defamation in the malicious publication, etc." Also, the defendant by pleading qualified privilege placed upon the State the burden of proof of actual malice.

However, in this case were it conceded that intent is not an ingredient of the crime of defamation, intent is involved in malice and therefore it was admitted for the purpose of showing actual malice, which carries with it intent. Reference here is made to LSA-R.S. 15:446. It is also recognized that evidence that might not be admissible for one purpose may be introduced for another if restricted to that purpose.

Therefore, the objection was overruled and a bill of exception was reserved, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 112]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER EIGHT

Be It Remembered That upon the trial of this cause, the State called as a witness one Arthur Roane, who was duly sworn and was asked by the prosecuting attorney if he (Garrison) made a statement to the witness on November 9.

And Whereupon, the defendant, by his counsel then and there objected for the reason that the witness was being questioned as to something that took place subsequent to the date of the alleged defamation, and that the events of November 9 were not relevant or material to the cause, but that the Court overruled the defendant's objection and permitted the witness to answer, to which ruling and decision of the Court the defendant, by his counsel, then and there excepted making part of the said Bill of Exception the question of the prosecuting counsel, the objection of the defense, the Court's ruling, the reasons for the objection, the answer of the witness and all of the testimony in the case, that the question, the objection, ruling and answer are set forth in pages 42 and 43 of the transcript of this case, which said pages are attached hereto and made part hereof as though copies herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel [fol. 113] aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 114]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER EIGHT

This bill of exception was reserved to an objection and ruling set forth on pages 42 and 43 of the transcript of evidence in this case. I ruled that for the purpose of showing malice, statements made before and after the defamatory statement were admissible and restricted to the question of malice. The effect of my ruling was that it did not

constitute another crime, but was restricted to the question of malice under this particular Bill of Information.

In Louisiana Digest, Libel and Slander, Section 60, we find the statement:

> "In an action of slander, other words than those charged, spoken at other times but within one year before the suit, may be proved to show malice."
> Kendrick v. Kemp, 6 Mart. (N.S.) 500.

Of course, LSA-R.S. 14:47 et seq. on defamation is a codification of the former crimes of criminal libel and slander I do not find that this case has been overruled and was of the opinion that statements made after a defamation would be likewise admissible to show malice. This statement also would show the state of mind of the defendant and had to do with the actual statement herein under consideration upon which charge was made.

Also, in 17 R.C.L., Libel and Slander, Section 194, Repetition by Defendant, it is stated:

> "In an action for libel or slander is has been held that proof of previous publications is admissible to show malice, although any action for such publications may be barred by the statute of limitations. Many [fol. 115] courts also apparently hold the broad view that in all cases evidence of a repetition by the defendant of his own slander may be shown to prove express malice. (Citing several cases.) 6 6 6 As respects the admission in evidence of a petitition of a slander after the commencement of an action therefor, it has been held that such evidence is admissible in aggravation of damages after proof of the charge as laid in the declaration, or to show malice, but not as an independent ground for damages. (Citing several cases.)"

However, I do not think that the repetition of the slander or defamation, or a portion thereof, could give rise to another charge, but would show the state of mind of the defendant when discussing the defamatory statement. In an attempt to prove malice it is impossible to probe the

heart or mind of the defendant to ascertain whether or not there was malice, hatred, ill will or enmity or a wanton desire to injure, but the best proof of that state of mind is what he says and does with reference thereto, both before and after the defamatory statement is published if it be in connection with the defamation charged.

Therefore, the objection was overruled and a bill of exception was reserved, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File ndorsement omitted]

[fol. 116]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER NINE

Be It Remembered That upon the trial of this cause, the State called as a witness one Jack Kneece, who was duly sworn and was asked by the prosecuting attorney if he (Garrison) had said anything about this case during the course of an address to the Press Association on the night of January 12, 1963, whereupon the witness answered that the defendant had stated during the course of the said address that even a bookie wouldn't take odds on the fact that he would be convicted, but that he was of the opinion that his conviction would be reversed by a higher court.

And Whereupon the defendant, through his counsel, then and there moved that the said testimony be stricken for the reason that the sole purpose of the testimony was to prejudice the defendant, but the Court overruled the defendant's objection, to which ruling and decision of the Court the

defendant excepted making part of the Bill of Exception the question of the prosecuting counsel, the answer of the witness, the objection to the said testimony, the Court's ruling and all of the evidence in the case; that the said question, answer, objection and ruling are set forth on pages 92 through 94, inclusive, of the transcript in this case, which said pages are attached hereto and made part hereof as though copies herein in extenso.

[fol. 117] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

....., Judge.

[File endorsement omitted]

[fol. 118]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER NINE

This bill of exception was reserved to the court's ruling as appears on pages 92 through 94 of the transcript of evidence. However, I think the whole of the evidence on pages 90 through 94 should constitute the evidence considered. This statement was made by the defendant in discussing the defamatory statement repeating the question of racketeering influences in referring to the judges in a statement that he made. For the reasons that were assigned in per curiam to bill of exception number eight, I was of the opinion that any statement he made about the judges, and which referred to the defamatory statement with which the defendant was charged, would be admissible to show malice. This comment, with other comments at the same time and considered together, was made with reference to this particular case,

and the comments made by the defendant with reference thereto would be admissible and was not considered by me as being prejudicial.

It will be noted that it is questionable whether a bill of exception was reserved to that portion of the statement with reference to the bookie, "that even a bookie wouldn't take odds on the fact that he would be convicted." I overruled the motion to strike and no bill was taken at that time (page 93 of the transcript of evidence). Then counsel for the State asked an additional question as to other statements about the judges on this occasion in which the defendant had expressed the opinion that he would be convicted but it would probably be reversed by a higher court. No ruling was made on this question and answer, but counsel for defendant makes the following statement:

> [fol. 119] "If Your Honor please, I am going to make the same objection. I presume the ruling is going to be the same, and I would like to reserve a bill of exception. I respectfully reserve Bill of Exception No. 9 to the Court's ruling denying our motion to strike this evidence, and I will ask that the Bill of Exception include the question, the answer, our objection to it, the Court's ruling, all of the evidence in the case, and the entire record."

It will be seen, therefore, that the bill was sought to be reserved to a motion to strike the evidence in the last question, answer and objection and the court's ruling; whereas, the court did not rule on the question, but counsel acted on the presumption that the court would rule as it had previously ruled on other questions.

Therefore, I do not think this bill could be said to be well taken even if it were to be otherwise meritorious. However, I do not consider it meritorious because it had no prejudicial effect on me one way or the other as to what his opinion of the outcome of the case would be, but it was simply a statement made by the defendant in connection with other statements made in the same talk, again refer-

ring to the defamatory statement and racketeering influences. Therefore, I sign this bill as explained and subject to this per curiam attached.

Thus Done And Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 120]

In Criminal District Court

Parish of Orleans, Louisiana

[Title omitted]

Bill of Exception Number Ten

Be It Remembered that upon the trial of this cause, the State called as a witness Judge Malcolm V. O'Hara, who was duly sworn and was asked by the prosecuting counsel if the witness had suffered as a result of the statement made by the defendant, whereupon the witness testified as to remarks and actions of other persons.

And Whereupon counsel for the defendant moved that the answer of the witness be stricken in that it was based on the impressions and opinions of the witness and that the testimony was purely hearsay, but that the court denied the said motion, overruled the objection of the defense and permitted the testimony to stand, to which ruling and decision of the Court the defendant, by his counsel, then and there excepted and made part of the Bill of Exception the question of counsel, the answer of the witness the motion to strike the answer, the Court's ruling on the motion and objection, the reasons of the defense for the motion and the entire testimony in the case; that the question, answer, motion and reasons and ruling of the Court are set forth on pages 152 through 156, inclusive, which said pages are attached hereto and made hereof as though copies herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders [fol. 121] the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 122]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TEN

This bill of exception was reserved to a ruling of the court on the question of whether or not the defamatory statement published had subjected this witness, who was one of the persons defamed, to ridicule to any extent. The defendant objected on the ground that it called for an opinion by the witness and also on the ground that it was hearsay. I did not think that the fact that the defamatory statement subjected the defamed person to hatred, contempt or ridicule would be a matter of opinion on his part. He would be the only one who would know and could testify as to the reaction of the public to the defamatory statement, and it is a question of fact as to how it affected his relationship. This is a question of fact within his knowledge and not a question of opinion because it arose by reasons of an observation rather than an opinion. Hatred, contempt or ridicule may be shown by the demeanor of his friends in shunning him, or in coldly greeting him, or other physical evidence of contempt, hatred or ridicule, or a coolness in his social relationship; and these are matters of fact and observation rather than opinion.

Also, with reference to the objection as to hearsay, nowhere will it be found in my ruling that any statements by other parties, out of the presence of the defendant, would be admissible. As a matter of fact, I specifically ruled "the witness could not testify as to conversations outside the [fol. 123] presence of the defendant" and excluded also any details of any reaction of the public, and restricted the evidence to that alone. This came after the motion to strike which rules out statements of others out of the presence of defendant.

In "McCormick on Evidence" (1954) the hearsay rule is defined as follows:

> "Hearsay evidence is testimony in court or written evidence, of a statement made out of court, such statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter. * * *
>
> "In the light of our discussion, then, we can say that the suggested definition, which is supported by many recent judicial expressions, seeks to limit the term 'hearsay' to situations where the out-of-court assertion is offered as equivalent to testimony to the facts so asserted by a witness on the stand. Only then does the want of such safeguards as cross-examination become material."

LSA-R.S. 14:47 in defining the crime of defamation as being a malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

> "(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; * * *."

Thus it will be seen that if the publication or expression did not expose the party defamed to hatred, contempt or ridicule, etc., then there would be no crime under the statutory provision. It is well established that every essential ingredient of the crime charged must be proven, and the

State was exercising its right to prove the result of the defamatory statement rather than any details or hearsay evidence. My ruling excluded particularly any hearsay evidence or opinion evidence, but allowed the introduction of [fol. 124] a question of fact within the knowledge of the witness as to the result of the defamatory statement in subjecting him to contempt, hatred, ridicule, etc.

I therefore overruled the objection as I was of the opinion that the evidence was clearly admissible to prove an essential ingredient of the crime in the Bill of Information, and I sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 125]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER ELEVEN

Be It Remembered that upon the trial of this cause, the State called as a witness one Robert Kelso, who was duly sworn and was asked by the prosecuting attorney to testify as to certain remarks made by the defendant on January 11, 1963, and stated in response to questions of the prosecuting attorney that he could not recall everything the defendant had said, but that he had taken notes on things that he, the witness, regarded as specially pertinent.

And Whereupon the defendant, by his counsel, then and there objected to testimony concerning the substance of the statement for the reason that the witness should not so testify unless he could recall substantially all of what the defendant had stated and that the witness should not be

allowed to qupte portions of the defendant's statement out of context, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection of the defense, the reason for the objection, the Court's ruling and the entire testimony of the witness, and the entire record in the case; that the pertinent testimony of the witness, including the question, objection, reasons therefor, the Court's ruling and answer thereto are set forth on pages 126 through 131, inclusive, of the transcript, which said pages are attached hereto and made part hereof [fol. 126] as though copied herein in extenso.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 127]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER ELEVEN

This bill of exception was reserved to evidence of statements made by the defendant to Mr. Robert Kelso, reporter, or in his presence. For a proper consideration of this bill of exception the whole of the testimony of this witness must be taken, beginning with line 4, page 125 of the transcript of testimony, rather than taking the portion only as set forth on the pages indicated in the bill of exception. This witness testified that he remembered substantially the whole of statements made by the defendant on the various occa-

sions and correctly reported them, and remembered the substance of what the defendant said, but could not testify *verbatim*. He is not required to report or testify verbatim on these statements, but to remember the substance and testify as to the substance or substantially all that was said. He further testified that he remembered the substance of what was said with reference to the *charge of defamation* by the persons alleged to be defamed, but on other issues which would not be relevant or material he did not report.

It will be noted on page 125 of the transcript of evidence, in referring to the remarks made by the district attorney on January 11, 1963 and reported in the press, that the question was asked (line 17):

"Q. What did Mr. Garrison say at that time?

"Mr. Organ: If Your Honor please, now I am going to object, unless this witness testifies that he can recall all of the substantial portions of Mr. Garrison's remarks relating to this case.

[fol. 128] "Q. Could you so recall, Mr. Kelso, in substance?

"A. Yes, I think so."

It will further be noted that on page 127 of the transcript of evidence, line 6, under questioning by me, the question was asked:

"Q. Did I understand you to say that you remembered the substance of all that was said there?

"A. Yes, in connection with this case, yes."

Therefore, I do not think counsel is correct in his statement that the witness could not recall substantially all that the defendant had stated insofar as it affected this case.

It is my impression that his evidence is complete and not taken out of context insofar as the remarks relating to the present case is concerned. I specifically ruled out any impression or import of the conversation or statement made by the defendant, but allowed to be introduced in evidence the statements made by the defendant for the purpose of

showing malice, which has been more fully discussed by me in my per curiam to bill of exception number eight. Also, I will make a part of this per curiam a ruling made at the time that the bill of exception was reserved. I might also observe here that any statement made by the defendant with reference to this particular difficulty or with reference to the commission of the crime with which he is charged, as to how and why he made the defamatory statement, would be admissible just as any statement of any defendant as to how or why he committed any other crime would be admissible if otherwise qualified under law.

[fol. 129] I therefore overruled the objection of the defendant to the admission of these statements, and sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 130]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER FIFTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Shirley G. Wimberly who was duly sworn and was asked by the Prosecuting Attorney as to whether the alleged defamatory statement of the defendant had subjected him, the witness, to ridicule, and as to how he had been subjected to ridicule, and stated in response to the said questions that he had received many telephone calls of derision.

And Whereupon the defendant, by his counsel, then and there objected on the grounds that such testimony was hearsay and on the further grounds that the witness should not be allowed to state an impression of a telephone conversation but that the witness should in any event be restricted

to stating the remarks of the other party to the conversation, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the questions of counsel, the objection of the defendant and the reasons stated therefor, the ruling of the Court, the entire testimony of the witness and all of the testimony in the case; and the pertinent testimony of the witness, including the questions, objections, reasons therefor, the Court's ruling and reasons therefor, are set forth on pages 253 through 255 inclusive of the transcript, which said pages are attached hereto and made part hereof as are copies herein in extenso.

[fol. 131] And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 132]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER FIFTEEN

This bill of exception arose by reason of any answer of the witness, Judge Shirley G. Wimberly, as to whether the defamatory statement of the defendant had subjected him to ridicule. This was objected to on the ground that it was hearsay and the evidence should not be allowed to state an impression of a telephone call. I make a part of this per curiam my per curiam which is attached to bill of exception number ten and my rulings on this question contained on pages 253 and 254 of the transcript of evidence. It will be

noted that it was not hearsay for the reason that nowhere in the ruling was the witness allowed to say what was said to him over the telephone, but only that there had been a public reaction by reasons of the defamatory statement. I specifically ruled that anything said to the witness over the telephone would be hearsay evidence. However, it is a question of fact within the knowledge of the witness that he did have telephone calls which did present a public reaction of hatred, contempt or ridicule, which was essential that the State be allowed to prove, and that is a question *of fact*, something that happened to him, within the knowledge of the witness and not a question of hearsay or impression.

I do not find in the testimony on pages 253 through 255 of the transcript any objection or ruling that the witness should in any event be restricted to stating the remarks of the other party to the conversation.

[fol. 133] I further assign as reasons herein by reference, insofar as they may be applicable, my explanation in per curiam to bill of exception number ten.

Therefore, I overruled the objection made, and sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 134]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SIXTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Oliver P. Schulingkamp who was duly sworn and was asked by the Prosecuting Attorney as to whether, since the publication of the alleged defama-

tory statement by the defendant, he, the witness, had been subject to ridicule, embarrassment and so forth as a result thereof.

And Whereupon the defendant, by his counsel, then and there objected to the question on the ground that the question called for a speculation on the part of the witness and called for his impressions which would be in turned based upon hearsay testimony, but that the Court overruled the objection and permitted the witness to testify, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection of the defendant and reasons therefor, the Court's ruling and its reasons therefor, the answer of the witness to the said question, the entire testimony of the witness and the entire record in the case; that the pertinent testimony of the witness, including the question, objection, reasons therefor and the Court's ruling and the answer to the question as set forth on pages 307 through 310, inclusive, of the transcript, which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 135] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel, aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 136]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SIXTEEN

This bill of exception was reserved to the overruling of an objection by counsel for defendant on a question propounded to Judge Oliver P. Schulingkamp as to whether or not the alleged defamatory statement by the defendant had subjected him to ridicule, embarrassment, etc. as a result thereof.

I have previously discussed this same question in my per curiam to bills of exception number ten and fifteen. I make a part of this per curiam my ruling at the time of the objection, appearing on pages 307-308 of the transcript of evidence. Nowhere does it appear that I have allowed the introduction of any hearsay evidence or any impression to be given. I have specifically ruled out any hearsay evidence in connection with this. Also, it might be stated that as to whether or not the witness had been subjected to ridicule, embarrassment, etc. as a result of the defamatory statement, that is a matter within his knowledge as an observation, and not an impression. It constitutes a question of fact; and hatred, contempt or ridicule can be evidenced in many ways other than by statements made by any third person, and this witness would be the only one by whom this fact could be proven.

I therefore sign this bill of exception subject to per curiam attached explaining it.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 137]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER SEVENTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Judge Thomas M. Brahney, Jr., who was duly sworn and was asked by the Prosecuting Attorney as to whether he had been personally exposed to hatred, contempt and ridicule as a result of the alleged defamatory statement by the defendant.

And Thereupon the defendant, by his counsel, then and there objected to the question for the reason that the witness could not know except through conjecture whether any occurence subsequent to the alleged statement of the defendant was caused by the statement of the defendant and for the further reason that such evidence was irrelevant and immaterial to the case, but that the Court overruled the objection and permitted the witness to answer the same, to which ruling and decision the defendant, by his counsel, then and there excepted making part of his Bill of Exception the question of counsel, the objection thereto, the Court's ruling and its reasons, the answer of the witness, the entire testimony of the witness and the entire testimony in the case; that the pertinent testimony of the witness, including the questions, objections, reasons therefor, the Court's ruling and its reasons and the answer to the said question as set forth in pages 515 through 518, inclusive, of the transcript which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 138] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 139]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER SEVENTEEN

This bill of exception arose by reason of a ruling on the question addressed to the witness, Judge Thomas M. Brahney, Jr., as to whether or not he had been personally exposed to hatred, contempt or ridicule as a result of the alleged defamatory statement by the defendant.

I make a part of this per curiam my ruling appearing on pages 516-517 of the transcript of evidence. Also, I make as a part of this per curiam the same reasons for overruling practically the same objection, as set forth in per curiam to bills of exception ten, fifteen and sixteen.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 140]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER EIGHTEEN

Be It Remembered that upon the trial of this cause the State called as a witness Chief Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, who was duly sworn and was asked by the Prosecuting Attorney to testify as to whether Mr. Garrison, the defendant, had called upon him for more assistance by police officers.

And Whereupon the defendant, by his counsel, then and there objected to the question for the reason that it was misleading, but that the Court overruled the objection and permitted the testimony, to which ruling and decision the defendant, by his counsel, then and there excepted, making part of his Bill of Exception the question of counsel, the objection and reason therefor, the Court's ruling, the answer of the witness, the entire testimony of the witness and all of the testimony in the case including previous objections to the same line of testimony and the statements of the Court in response to the said previous objections; that the pertinent testimony of the witness including the question, objection, the reason therefor, the ruling of the Court, the answer of the witness, prior objections of the defense and statements of the Court and response thereto are set forth in pages 597 through 603, inclusive, of the transcript, which said pages are attached hereto and made part hereof as are copied herein in extenso.

[fol. 141] And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 142]

IN CRIMINAL DISTRICT COURT

ORLEANS PARISH, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER EIGHTEEN

This bill of exception was reserved to a ruling on a question addressed to Chief Joseph I. Giarrusso, Superintendant of the New Orleans Police Department, by counsel for the State, as to whether or not the defendant had called upon him for more assistance by police officers.

Counsel in his bill of exception seeks to make a part thereof prior objection of the defense and statements of the court in response thereto, as set forth in pages 597 through 603 of the transcript of evidence, inclusive. However, it will be noted that pages 597, 598 and 599 were questions and discussions of law in which counsel for defendant states at the bottom of page 599:

> "Mr. Organ: Well, that is what he is going to testify, if that was the purpose of the question, we have no objection to it."

To which counsel for the State replied: "That is the sole purpose." Therefore, the evidence appearing on those pages should not be considered, as counsel had stated that he had no objection, which waived any previous objection, etc.

However, beginning on page 600 of the transcript of evidence, the question was asked by counsel for the State as to whether or not defendant had called upon him (Chief Giarrusso) for any more help since certain police officers had been assigned to the office of the defendant. This was objected to by counsel for defendant as misleading, but I did not believe that it could possibly be misleading. The [fol. 143] evidence by this witness, without objection, was that the defendant and his assistants had selected twelve police officers to be assigned by the Police Department to the defendant's department, eleven of whom were how serving. Certainly it was proper to allow the State to ask whether any more police officers had been requested or assigned to that department. This was neither misleading or prejudicial.

At the top of page 601 of the transcript of evidence, I did not allow the prior questions and statements to go into the bill for the reason that counsel had waived this by stating that he had no objection to it after the court explained its ruling, but I restricted the bill of the last question and answer, and no objection was made to this by counsel for defendant or bill reserved. Neither did I allow the State to go into the question as to what might have

been the result if the defendant had called for more assistance. (Tr. p. 603.)

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 144]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration as a charge would be presented were the case tried by a jury, a proposition of law and requested the ruling of the Court on this proposition which was numbered Eleven and reads as follows:

> "Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec 795; see *Deshotel* v. *Thistlethwaite*, t40 La. 12, 121 So. 2nd 222."

The Court rejected Proposition of Law No. Eleven for the reason that it allegedly has no application to the facts of this case and is not a full and correct statement; further, that it would require an extended qualification, explanation and limitation if it were applicable; further, that the statement is incomplete and therefore the Court is not required to charge it; and further, that it is not a complete and correct statement of the Court's ruling in the case of *Deshotel* v. *Thistlethwaite*.

To which ruling, the defendant, through his counsel, reserved a bill of exception and stated as his reason therefor that the evidence in this case shows that defendant's actions arose directly out of his duties as District Attorney for the Parish of Orleans, that he was in the discharge of a public duty when this controversy arose, and further that he has the duty, as a matter of law, to inform the public of the conduct of his office; and if he is thwarted in the operation and conduct of his office he has the duty to inform the public why he is so thwarted; and furthermore, the proposition is a complete statement of the law insofar [fol. 145] as the publications of a person who has a public duty to make the publication is concerned, and so would be applicable to this case. Defense counsel included in this bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 11, his Honor's rejection of it, the reason for the rejection, and the statement of defense counsel in support of the said proposition of law.

And There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of 1963.

....., Judge.

[File endorsement omitted]

[fol. 146]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM — BILL OF EXCEPTION NUMBER TWENTY

This bill of exception was reserved to a rejection by me of a proposition of law as set forth in this bill. This propo-

sition of law was rejected for the reason that it had no application to the facts in this case and is not a full and correct statement of the law. It was further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement was incomplete, and under these circumstances the court was not required to charge this. LSA-R.S. 15:390, and cases thereunder.

Further, it was rejected as not a complete and correct statement of the complete ruling in the case of Deshotel v. Thistlethwaite, cited.

I did not think that the Deshotel v. Thistlethwaite case supported a publication such as in this case without limitation of the abuse of the privilege and that the defendant would not be amenable for false defamatory statements for the abuse thereof, which would be violative of Article One, Section Three, of the Constitution and Statutes of the State of Louisiana.

I did not find any fault with the statement that a public officer has a right to inform the public of the conduct of his office, and if it were privileged it would only be a conditional or qualified privilege; which, of course, could be destroyed by proof of actual malice.

This was a Proposition of law taken out of context of the [fol. 147] author and was subject to qualification, explanation and limitation in a consideration of the whole of the article. In the discharge of a public duty under authority of law, or a public officer in informing the public of the conduct of his office, it should be that the publication would be true in the discharge of a public duty, asserting legitimate reasons, rather than a false defamatory statement imputing wrongdoing to another public officer without any facts to justify it. I did not find that the statement made by the defendant was a publication made in the discharge of a public duty altogether, but was a defamatory statement of fact maliciously made, and not a comment alone upon admitted facts; but he went beyond that and made statements of fact which were false.

Further, I did not find that this charge was *wholly correct* and *wholly pertinent* to the facts in this case. Also, I found that it would require an even more extended qualification, explanation and limitation if it were applicable.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 148]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-ONE

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered thirteen and reads as follows:

> "Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375."

The Court qualified Proposition of Law No. thirteen by pointing out that Article 1, Section 3, of the Louisiana Constitution provides that a person shall be responsible for the abuse of liberty of speech; and that the statement is evidently one taken out of context from the decision of *Wood* v. *Georgia*, which was a contempt proceeding and not an action in defamation.

To which ruling, the defendant, through his counsel, reserved a bill of exception, excepted and stated as his reason therefor that *Wood* v. *Georgia* dealt with freedom of speech, and it makes no difference whether freedom of speech is challenged through the media of contempt proceedings or criminal defamation proceedings; if freedom of speech pro-
[fol. 149] tects an individual, it protects him against all challenges.

Defense counsel included in this bill all of the testimony in the case, the entire record, his request for Proposition of Law No. 13, His Honor's ruling, and his reasons therefor.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 150]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-ONE

This bill of exception was reserved to a proposition of law number thirteen submitted to the court as set forth in the attached bill of exception. This was not rejected but was granted, qualified however in that Article One, Section Three, of the Constitution of the State of Louisiana was not a part of the holding in the case of Wood v. Georgia and its authority.

Article One, Section Three of the Constitution of Louisiana, provides:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*

I did not think that the case of Wood v. Georgia is wholly pertinent to this action of defamation for the reason that that was a contempt proceeding and the holding of the right of freedom of speech there was turned upon the question of whether or not there was a clear and apparent danger to the administration of justice that would vitiate the freedom to express opinions as were therein expressed. Also, the statement was taken out of context and added to, and should be taken in connection with a reading of the decision as a whole.

This is an action for defamation under the provisions of LSA-R.S. 14:47 and qualified privilege pleaded under LSA-R.S. 14:49, which provides that if the statement is qualifiedly privileged, it must be based upon a reasonable belief [fol. 151] in the truth of the comment. Therefore, I considered it was not wholly pertinent under the authorities cited or applicable to the facts in this case, being an action

in contempt rather than defamation, and also that under Article One, Section Three, of the Constitution of the State of Louisiana one might be held responsible for an abuse of the liberty of the freedom of speech.

I granted this proposition of law for the reason that I agree in principle with it, but in addition to the other reasons assigned as to why it might not be applicable to the facts in this case, it might be noted that this principle of law only permits a *just criticism,* rather than defamatory statement of facts.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 152]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-TWO

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Fourteen and reads as follows:

> "The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375."

The Court rejected Proposition of Law No. 14 as an incomplete statement of the law on the subject; as inconsistent with Article 1, Section 3 of the Louisiana Constitution, which places certain restrictions on the exercise of free speech; and as inapplicable to the facts of the case and to the defense of the accused, which is a qualified and not an absolute privilege.

To which ruling, the defendant, through his counsel, excepted to the Court's ruling and stated as his reason therefor that the case of *Wood* v. *Georgia* holds that freedom of speech is guaranteed by the United States Constitution, which cannot be qualified by any law of the State of Louisiana, constitutional or otherwise; and further on the basis that the entire record in this case discloses that Mr. Garrison was an elected official and therefore this proposition applies directly to his activity, with a duty to the people of the Parish of Orleans. Defense counsel included in this [fol. 153] bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 14, his Honor's ruling, and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 154]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-TWO

This bill of exception was reserved to a proposition of law number fourteen submitted to the court which was rejected for the reason that it was incomplete and not a correct statement of the law as to Article One, Section Three of the Constitution of the State of Louisiana. However, I did not hold it inconsistent therewith as stated by counsel in his bill of exception. I did not say in rejecting it that the Louisiana Constitution, or any law of the State of Louisiana, could qualify or be superior to the United States Constitution. However, I did not find that the Constitution of the United States or the Constitution of the State of Louisiana grants an *absolute* privilege to make *any* statement, particularly a false defamatory or derogatory statement, simply because a person is an elected official, in commenting on matters of public importance, and in so doing, make unsubstantiated and false statements of fact regarding other persons, rather than commenting upon admitted facts, and the party defamed would have no legal remedy.

I did not find also that the case of Wood v. Georgia, cited as authority, supports an absolute privilege to an elected official to *so* speak and conduct himself *in all* cases. I did not find any fault with the first sentence of the proposition if the freedom of expression is not abused.

[fol. 155] Defendant in this case has only pleaded a qualified privilege. However, he would be entitled in a criminal case to any privilege afforded by the law. This proposition of law was rejected also for the reason that there could be no absolute privilege as defined in LSA-R.S. 15:50. It was also rejected for the reason that it was not applicable to the facts in this case and was not *wholly correct* and wholly pertinent.

I therefore sign this bill of exception as explained and subject to this per curiam.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 156]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-THREE

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Sixteen and reads as follows:

> "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the right of free speech. *Wood* v. *Georgia*, 370 U.S. 375."

The Court rejected Proposition of Law No. 16 as an incorrect statement of the expression of the Court in *Wood* v. *Georgia* because the words "for contempt" had been omitted; further because the case of *Wood* v. *Georgia* was a contempt proceeding and the Court in that case was considering whether or not the out of court statements presented a clear and present danger to the administration of justice and whether or not the contempt power to punish for the statements abridged that defendant's right of free speech;

and further because the proposition was not in his opinion pertinent to the facts of the instant case.

To which ruling the defendant through his counsel reserved a bill of exception and stated as his reason therefor that *Wood* v. *Georgia* applies primarily to freedom of speech under the United States Constitution, and whether [fol. 157] the challenge to that right is by a contempt proceeding, a defamation proceeding, or any other proceeding is entirely immaterial.

If the cloak of freedom of speech is present, it protects the defendant in this case from all challenges to freedom of speech, including the instant charges; the rights of the First Amendment to the United States Constitution cannot be abridged by any or jurisprudence law of the State of Louisiana. Defense counsel included in this bill all of the testimony in the case, the entire record of the case, his request for Proposition of Law No. 16, his Honor's ruling thereon, the reason therefor and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 158]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-THREE

This bill of exception was reserved to proposition of law number sixteen, which was rejected for the reason that it is not a correct statement of the expression of the Court in Wood v. Georgia, 370 U.S. 375. Whether purposely or not, the words "for contempt" are left out of the quotation between the word "through punishment" and "for the expression." Therefore, the holding in that case is that one might not be "*punished for contempt*" for the expression." It will be noted here that the case of Wood v. Georgia, supra, was a contempt proceeding and the court in that case was considering whether or not the out-of-court statements made presented a clear and present danger to the administration of justice and whether or not the contempt power to punish for the statements abridged the right of free speech.

It might also be noted that in the case of Wood v. Georgia the petitioner had been denied the right to prove the truth of his allegations; the trial court holding irrelevant the truth or falsity of the facts and opinions expressed in the publication.

Defamation and contempt proceedings are dissimilar. Statements may be made by which one could be punished for contempt, as presenting a clear and present danger to the administration of justice, that are non-defamatory. On the other hand, defamatory statements may be made and are subject to the penalties of the law that have nothing [fol. 159] whatever to do with contempt or the administration of justice. It goes without saying that principles of law are applied to the facts in the case, and I did not find this *wholly correct* or wholly pertinent to the facts in this case; particularly that it was a partial statement taken out of context on an entirely different factual situation.

I therefore sign this bill of exception as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge Ad Hoc.

[File endorsement omitted]

[fol. 160]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-FOUR

Be It Remembered that upon the trial of this cause, before the argument had begun, defense counsel presented to the Court for its consideration a proposition of law, as a charge, would be presented were the case tried by a jury, and requested the ruling of the Court on this proposition which was numbered Seventeen and reads as follows:

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused."

The Court qualified Proposition of Law No. 17 by the Supreme Court of Louisiana's decision in *State* v. *Lambert*, 188 La. 968, 178 So. 508, in which the court said:

> "If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2nd Ed., P. 439."

The Court also qualified this proposition of law by the statement that the State must prove malice where there is a qualifiedly privileged statement.

To which ruling, the defendant, through his counsel, excepted and stated as his reason therefor that the State must prove malice in all cases of criminal defamation, whether a qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where [fol. 161] the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all cases of criminal defamation.

Defense counsel included in this bill of exception all of the testimony in the case, the entire record, his request for Proposition of Law No. 17, his Honor's ruling thereon, his reason therefor, and the statement of defense counsel in support of the said proposition of law.

And, There Being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 162]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER TWENTY-FOUR

This bill of exception was reserved to a proposition of law number seventeen, in which the proposition was *granted* and not rejected. I do not know the purpose of this bill for the reason that the proposition of law was correct in principle, although incomplete; actual malice has many

other definitions under which it might be proven by extrinsic evidence. In charging myself as to the law I have a right to make the same qualification or explanation in connection with other laws and decisions that I would be charging a jury, where the proposition of law charged is incomplete. Therefore, I had the right to qualify this statement of law by taking into consideration other principles of law and decisions of the courts to complete it so that it would be clearly set forth.

The State must prove actual malice where there is a qualifiedly privileged statement under the provision of LSA-R.S. 14:49. It may be proven by extrinsic evidence of hatred, ill will, spite, enmity, etc. or the wanton desire to injure on the part of the defendant.

It was further qualified by the statement made in the case of State v. Lambert, 188 La. 968, 178 So. 508, as taken in connection with the reading of the cases as a whole, in which the court said:

> "(5, 6) If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2nd Ed., p. 438."

[fol. 163] My reason for qualifying it was that my impression was that it sought *to restrict the proof of actual malice to extrinsic evidence only, of hatred, ill will or wanton desire to injure on the part of the accused.*

Actual malice is susceptible to other definitions also and could be proven by extrinsic evidence under those definitions, and the State is not restricted in proving actual malice by any other legal means.

It was also qualified by the provisions of LSA-R.S. 14:49, which provides that the State must prove actual malice, whether the statement is true or false, under the provisions of said article.

Counsel for defendant (transcript of evidence page 644) made the statement as to how he appreciated the ruling in that the effect was that the State must prove malice in cases only involving qualified privilege. I do not see how this appreciation was arrived at as I was discussing nothing more than the law of actual malice and a qualifiedly privileged statement as requested by counsel.

Counsel has in this bill of exception set up an additional explanation after ruling, stating his reasons therefor the proof of malice in all cases. This question could not be raised after the requested charge was given because there was no request made of the court for a charge as to the law on a non-qualifiedly privileged statement or legal malice. Therefore, counsel has set up in this bill of exception the question of legal malice where there is no qualified privileged statement, which was not requested of the court in the charge; and, of course, this additional reason asserted after the court has ruled on the proposition of law submitted does not make it a proposition of law or a charge that should [fol. 164] have been passed upon and should form no part of the bill of exception. It is a recognized principle of law that a judge is presumed to know the law and does not have to charge himself on any question of law not requested in a misdemeanor case tried by the judge alone.

The requested charge was *granted* but was qualified for the reason that it was not a complete statement of the law of proof of actual malice and was not a *wholly* correct statement of the law as applied to the facts in this case.

I therefore sign this bill as explained and subject to this per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 165]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-FIVE

Be It Remembered that the Court rendered a verdict of guilty as charged against the defendant in this cause, whereupon before sentence was imposed, defendant through counsel filed a motion for a new trial which motion set forth allegations of error to the prejudice of the accused, a copy of which motion is attached hereto and made part hereof by reference as fully as though copies herein in extenso; that the Court denied the motion for a new trial, to which ruling the defendant, through his counsel, excepted and reserved a Bill of Exception incorporating therein all of the testimony and evidence introduced at the trial of this case, the entire record in the case, the motion for a new trial and the Court's ruling thereon.

And, There being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal bill of exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 166]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER 25

This bill of exception was reserved to overruling of motion for a new trial. I was of the opinion that the evidence in the record supported the judgment of the court and was not contrary to the law and the evidence in the case. I was further of the opinion that most of the allegations in the motion for a new trial were based upon bills of exception which were filed, and which have been heretofore ruled upon as explained in my per curiam to the bills; and I found no merit in this motion for a new trial for those reasons, and other reasons.

Applying myself particularly to paragraph nine of the motion for a new trial, nowhere in my rulings will it be found that I permitted hearsay statements of other persons, whose identities were unrevealed and unknown, for the alleged purpose of showing that the judges were subjected to hatred and ridicule as a result of the statements of the defendant. Each time an objection was made I specifically ruled out any details of these conversations and that no evidence was admissible of any statements made outside of the presence of the defendant.

Addressing myself to paragraph ten of the motion for a new trial, there was no error in not accepting all propositions of law as submitted to the court by the defense. Bills of exception were reserved only to some of them, and these have been discussed in my per curiam attached to each bill [fol. 167] of exception. On those propositions of law on which no bill of exception was reserved, no question can be raised on a motion for a new trial, but should have been raised prior to verdict in the case.

Therefore, I sign this bill as explained and subject to my per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 168]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

BILL OF EXCEPTION NUMBER TWENTY-SIX

Be It Remembered That the Court rendered a verdict of guilty as charged against the defendant in this cause, whereupon before sentence was imposed, the defendant, through counsel, filed a Motion in Arrest of Judgment, which said motion set forth that the statute upon which the accused was tried was in violation of the Constitution of the United States, which said motion is attached hereto and made part hereof by reference as fully as though copied herein in extenso; that the Court denied the Motion in Arrest of Judgment, whereupon defendant, through his counsel, excepted and reserved a Bill of Exception, incorporating therein the Motion in Arrest of Judgment, the Bill of Information and the Ruling of the Court.

And, There being error to the prejudice of the defendant, your defendant, Jim Garrison, through his counsel aforesaid, files this, his formal Bill of Exception, and tenders the same to the Court pursuant to the statute in such case made and provided, which is done accordingly on this day of , 1963.

....., Judge.

[File endorsement omitted]

[fol. 169]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

[Title omitted]

PER CURIAM TO BILL OF EXCEPTION NUMBER 26

This bill of exception was reserved to overruling the motion in arrest of judgment. I did not think that the statutes of the State of Louisiana, under which the bill of information was laid, are unconstitutional, null and void as being in violation of the First Amendment of the United States Constitution as a restriction on the freedom of speech.

Therefore, I sign this bill as explained and subject to my per curiam attached.

Thus Done and Signed this 28th day of February, 1963.

Wm. H. Ponder, Judge ad hoc.

[File endorsement omitted]

[fol. 170] Clerk's Certificate (omitted in printing).

[fol. 173]

IN SUPREME COURT OF LOUISIANA

No. 46,686

STATE OF LOUISIANA

VS.

JIM GARRISON

On Appeal from the Criminal District Court for the Parish of Orleans, State of Louisiana. Honorable William H. Ponder, Judge ad hoc.

OPINION—June 4, 1963

HAMLIN, Justice:

The defendant, Jim Garrison, appeals from his conviction of the offense of Defamation[1] (LSA-R.S. 14:47) and his sentence to pay a fine of $1,000.00 or, in default of payment of said fine, to serve four months in the Parish Prison.

The Bill of Information charging the defendant with the offense of defamation recites:

"Jack P. F. Gremillion, Attorney General for the State of Louisiana, who in the name and by the authority of the said State, prosecutes, in this behalf, in

[1] "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends:

"(1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse; or

"(2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

"(3) To injure any person, corporation, or association of persons in his or their business or occupation.

"Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year, or both." LSA-R.S. 14:47.

proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be [fol. 174] informed that one Jim Garrison late of the Parish of Orleans, on the 2nd day of November in the year of Our Lord, one thousand nine hundred and sixty-two with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully, unlawfully and maliciously defame each, George B. Platt, Judge of Section 'B', Criminal District Court for the Parish of Orleans and the presiding judge thereof, and one Malcolm V. O'Hara, Judge of Section 'A' of the Criminal District Court for the Parish of Orleans, one Edward A. Haggerty, Jr., Judge of Section 'C', Criminal District Court for the Parish of Orleans, one Thomas M. Brahney, Jr., Judge of Section 'D' of the Criminal District Court for the Parish of Orleans, one J. Bernard Cocke, Judge of Section 'E', Criminal District Court for the Parish of Orleans, one Oliver P. Schulingkamp, Judge of Section 'F', Criminal District Court, for the Parish of Orleans, one Shirley G. Wimberly, Judge of Section 'G', Criminal District Court for the Parish of Orleans, and Bernard J. Bagert, Judge of Section 'H', Criminal District Court for the Parish of Orleans, which said judges constitute all the entire bench of the Criminal District Court for the Parish of Orleans, and did publish and express in the public press of the City of New Orleans to persons other than the parties defamed which said publication and expressions are recited herein below of certain things which tend to expose to hatred, contempt and ridicule and deprive such persons of their benefit of public confidence and social intercourse. The said publication and expressions being contained in the following news item reproduced from the New Orleans States-Item, (an afternoon daily newspaper published in the City of New Orleans, Parish of Orleans, published on November 2nd, 1962 which reads as follows, to-wit:

"'TEXT OF GARRISON STAND ON JUDGES

"'The statement by District Attorney Jim Garrison on his feud with the criminal district court judges follows:

"'Apparently the judges have called in all their reserves.

"'(A reference to the joint meeting of all criminal court judges today.)

"'Whatever their resulting statement turns out to be, I doubt if the facts will be much more accurate than those in Judge (William J.) O'Hara's statement.

"'I will cite some glowing examples of misrepresentation of facts.

"'First of all is the attempt made to counterattack by imputing to this office the responsibility for the overcrowded conditions of the Parish Prison.

[fol. 175] "'Judge O'Hara makes the fantastic implication that somehow the system of operation of my office has created this condition. The short reply to this untruth is that the Parish Prison was vastly overcrowded the day we were sworn in.

"'There was not only a backlog of untried cases then . . . there has been for years.

"'For example, the judge admits in his own statement that the (Leon D.) Hubert office inherited a backlog of 3500 cases. When we came into office in May, the backlog had risen to approximately 4600 cases.

"'Inasmuch as the judges have been the only continuing caretakers of the criminal courts operations over the years, it is pretty obvious where the real responsibility lies for the revised backlog of untried cases.

"'District attorneys come and go every four years but the judges and the backlog always seems to be here.

"'Furthermore, I am sure that Judge O'Hara knows that no district attorney's office in years has pushed more cases to trial than we have in our first six months of office.'

"'We have prosecuted approximately 40 jury trials already—despite the fact that the winter term of the courts has just begun.

"'An objective study by an outside agency will reveal that this is at least as many trials as were held the last two years prior to our arrival.

"'To go on to another misrepresentation, Judge O'Hara has made the incredible statement that we have pulled our investigators away from the courts. The truth is that our investigators are with the trial assistant, invariably within arm's reach of the assistant, in full sight of the judge in every courtroom throughout every trial.

"'Obviously this is nothing more than a petulant slap at our use of investigators to uncover vice conditions in the city—an operation with which the judges have shown a remarkable lack of sympathy.

"'As a matter of fact, so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations of B-drinking and other forms of vice.

"'This was accomplished by the judges tying the purse strings of the district attorney's fines and fees [fol. 176] and informing me that no further money could be used in the investigation of any vice conditions.

"'The judges have specifically directed that the district attorney's office 'should not investigate anything' and informed me that they would allow me to use no further money from my large fines and fees—presently $40,000—for any form of vice investigation.

"'In certain areas where we have spent borrowed money to keep operating against vice—in major handbook operations as well as in B-drinking cases—the judges have instructed me that this money will not be replaced out of fines and fees. I must pay this out of my own pocket.

"'Again the message from the judges is clear. They do not want the district attorney's office to investigate anything.

"'Interestingly enough, had I let them stop me in August as they attempted to do, I would not have been able to keep the pressure on the Canal Street B-joints, which ultimately resulted in the closing of all of them.

"'I succeeded in keeping up the pressure on these places, despite the judges' tying of the purse strings, by my personal loan from the Bank of New Orleans.

"'The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints . . . closed them, despite their (the judges') obvious attempts to block me, they now seek to slap the DA on the wrist by making him pay for this successful operation out of his pocket.

"'Again the message is clear: 'Don't rock the boat, son. You are not supposed to investigate anything.'

"'This raises interesting questions about the racketeer influences on our eight vacation-minded judges. This is a matter regarding which I will have [much[2]] more to say a little later.

"'To go on to another misrepresentation of Judge O'Hara's statement, I am sure that he well knows that we did not throw out the trial preparation system of Mr. Hubert.

[fol. 177] "'That was junked four years ago by the preceding DA's office and there was no comment by Judge O'Hara about its disappearance throughout the four years.

"'As a matter of fact, this office gives special attention to the preparation of trial and has adopted a number of the excellent trial preparations of the Hubert era.

"'To give a specific example, our office now is in the process of printing for distribution to every criminal defense attorney and every court the trial docket for the month to come.

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[2] The word "much" is contained in the newspaper article.

"'Our setting of particular cases on particular dates is so arrived at to avoid such conflicts as having cases in different courts by defendants or an attorney on the same day.

"'Interestingly enough, this program was abandoned by the previous DA's administration, and again there was not a word from Judge O'Hara.

"'O'Hara has now developed—subsequent to his retirement—a concern for the efficient operation of the trial dockets.

"'Actually, the time for Judge O'Hara to be active in his concern for the district attorney's office was during the preceding four years when there was a complete breakdown of vice prosecution and prosecution of cases in every area.

"'So complete was this breakdown that in the last several years there were almost no trials of any kind for commercialized vice. The judge at no time expressed any concern for this breakdown of the prosecution office.

"'The first discernible interest on their part with regard to the district attorney's handling of vice cases arrived the past summer when it became apparent that this office was achieving success in its effort to eliminate the B-drinking racket in New Orleans.

"'This is when, to my astonishment, I suddenly received instructions—through Judge O'Hara himself, speaking for the rest of the judges—that I could no longer spend any money out of fines and fees for anything.

"'Since this was in August—there was not to be an en banc meeting until October when all the judges returned from their vacations—this would have had the effect of blocking our vice investigations. This is [fol. 178] when I borrowed money from the bank and continued to investigate B-drinking in spite of the judges.

"'If the judges would show half as much interest in solving dangerous overcrowded conditions of the Parish Prison, and this overcrowding has been pres-

ent for years not just the last few weeks, as they have shown in their successful attempts at completely blocking the anti-B-drinking operations of my office; the Parish Prison problem would be ended overnight.

"'The efficiency and dispatch with which the judges of the present court stopped my undercover investigations of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

"'It is unfortunate that there is no comparable interest on their part with regard to the problem of inmates awaiting trial month after month in the Parish Prison.

"'It is incredible that in this country in 1962 that a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation.

"'There are now approximately 520 prisoners awaiting trial out of a prison population of 758.

"'I think this is an outrageous condition which should be answered not by petulant words by the judges but by action—to immediately increase the number of trial days of this court so that the men can be brought to a speedy trial.'

contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

(Signed) Jack P. F. Gremillion
Attorney General for the
State of Louisiana"

The record reflects that the statement or expression set forth in the foregoing Bill of Information was given by the defendant, Jim Garrison, District Attorney for the Parish of Orleans, to the New Orleans press and published by said press, after the judges of the Criminal District Court [fol. 179] refused to sign orders for the payment of funds out of the Fines and Fees Fund for expenditures of the

District Attorney. The District Attorney had taken no legal steps to compel the judges to sign said orders.

The Bill of Information, supra, was filed shortly after defendant's statement was published.

On November 13, 1962, the Supreme Court of the State of Louisiana appointed Honorable William H. Ponder, Judge of the Eleventh Judicial District Court, to sit as Judge ad hoc for the Criminal District Court for the Parish of Orleans for the trial of the instant cause, No. 177-418 of the Docket of the Criminal District Court for the Parish of Orleans, entitled, "State of Louisiana versus Jim Garrison." Article VII, Section 12, of the Louisiana Constitution of 1921. LSA-R.S. 15:307. The order was effective immediately. The Presiding Judge of Section "C" of the Criminal District Court, to which section this case had been assigned, recused himself, and Judge Ponder ascended the Bench for the commencement of trial.

The defendant thereafter filed a Motion to Recuse, alleging:

> "That the Honorable P. F. Jack Gremillion, Attorney General for the State of Louisiana, who prosecutes this case in the name of the State of Louisiana, has publicly stated in the public press and otherwise, his belief that the integrity of the entire judiciary of the State of Louisiana is an issue in this case and has thus announced his intention of making the integrity of the Louisiana judiciary an issue in the trial thereof; that the said utterances and the proposed trial have had and will have the effect of making the entire judiciary of the State of Louisiana an interested party to this case within the meaning of the recusation statutes of the State of Louisiana.
>
> "That the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana State Supreme Court of a trier of fact for a particular case, are unconstitutional and null and void as violative of the due process provisions of the Fourteenth Amendment, and that the ap- [fol. 180] pointment of the said Honorable William H. Ponder, under color of authority of the said provisions

of the Louisiana State Constitution and Revised Statutes, is therefore null and void and of no force and effect."

The trial judge denied the above Motion to Recuse, and Bill of Exceptions No. 1 was reserved to his ruling.

In this Court appellant argues that:

"• • • the Honorable William H. Ponder prejudged this case, and had *already*—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. In support of this contention we call the Court's attention to the fact that from the first moments of the trial, and continuously thereafter during the many days which the trial lasted, Judge Ponder referred in no uncertain terms to the per curiams which he would write in this case. No citation of authority is needed to prove that, once jeopardy has set in, per curiams are only written by a trial judge in the event the accused is found guilty and appeals from his judgment of conviction. • • •"

Appellant further states:

"It is the position of the accused that whether his guilt or innocence was to be determined by a judge or a jury, he was not provided with due process of law if the trier of fact was subject to arbitrary selection, particularly by the judiciary of the State of Louisiana. Even without the judiciary's interest in this matter, such an appointment would not provide a defendant in a misdemeanor case with due process since the logical extension of such a procedure could be to give the Supreme Court the power to appoint the jury in a felony matter. It is submitted that only a jury properly drawn, selected and empaneled, or a judge who has been duly elected to an office specifically empowered to decide guilt or innocence in criminal cases in a particular jurisdiction provides an accused with due process of law.

• • • • • • • •

"In the instant case the Criminal District Court Judges took a most active and vigorous part in the prosecution of this accused. The integrity of the entire state judiciary was threatened and questioned by the widely publicized opinion of the Attorney General. In the minds of the general public this case became the case of the District Attorney versus the Judiciary. A verdict for the defendant would have condemned the judiciary, particularly in the eyes of the public. The judiciary could not stand in a position of the accusors, the judge, the jury and the executioners and give Jim Garrison a constitutional trial."

[fol. 181] Article VII, Section 10, of the Louisiana Constitution of 1921, provides that the Supreme Court of the State of Louisiana shall have control of and general supervision over all inferior courts. Article VII, Section 12, of the Louisiana Constitution of 1921, empowers this Court to make an appointment such as was made herein. The appointment was therefore not in violation of any of the provisions of the State Constitution. We find no federal prohibition with respect to an appointment such as the instant one; it therefore follows that defendant's complaints with respect to a violation of the Fourteenth Amendment to the United States Constitution are without merit. The record is barren of any showing that the defendant suffered prejudice by the refusal of the trial judge ad hoc to recuse himself. LSA-R.S. 15:557. Defendant's arguments that he was deprived of due process of law, and that the Bill of Information should be dismissed because there is no proper judge in the State of Louisiana to try him, are also without merit.

LSA-R.S. 15:303[3] sets forth the causes for which any

[3] "The causes for which any judge in any criminal case shall be recused, shall be as follows: (1) His being interested in the cause; but in any cause in which the state, or one of its political subdivisions, or any religious corporation, is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or that he is a member of the religious corporation, shall not constitute a ground for recusation. (2) His being the spouse of the accused or the party injured or

judge in any criminal case shall be recused; none of these causes are applicable to the instant trial judge. A reading of the Motion to Recuse reflects that it contains general statements of conclusions, which do not constitute grounds [fol. 182] for recusation. Under the circumstances, the trial judge could rule upon the Motion to Recuse, and he acted properly in ruling upon it.

> "The jurisprudence of this State is well-settled that if the allegations of the petition for the recusation of a judge are mere general statements of conclusions that the judge is prejudiced and biased against or hostile to the defendant because of personal or political reasons, or that if the petition does state facts which, if proved, would not constitute a legal ground for recusation, the judge who is sought to be recused may himself overrule the motion and need not refer it to another judge for trial. * * * " State v. Doucet, 199 La. 276, 5 So. 2d 894. See, State v. Laborde, 214 La. 644, 38 So. 2d 371.

As stated supra, defendant argues that the trial judge had prejudged this case, and had *already*—subconsciously—found the accused guilty of defamation when the trial began on January 21, 1963. Defendant cites, among others, the following remarks of the trial judge:

> " * * * The Court has sustained any statements made after the objection has been made. It will be more fully covered in the per curiam of the Court. * * * "
>
> " * * * The Court will set forth more fully its legal reasons for this ruling on these bills of ex-

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one of the attorneys; his being related to the accused or to the party injured or to the spouse of the accused or the party injured within the fourth degree, or to one of the attorneys or to the spouse of one of the attorneys within the second degree. (3) His being a material witness in the cause. (4) His having been employed or consulted as an attorney in the cause or his having been associated with an attorney during the latter's employment in the cause. (5) His having performed any judicial act in the cause in any other court." LSA-R.S. 15:303.

ception in its per curiam, which will be attached to and made part of the bill of exceptions."

"• • • the Court allows it to be admitted, and the Court will assign its reasons for the admission in a per curiam, which will be attached to the Bill of Exception, • • • "

We do not agree with counsel's argument;[1] the record is replete to the effect that the trial judge did not prejudge this matter. It is clear to us that an experienced judge such as Judge Ponder (the trial judge herein) meant that he would amplify his rulings in his per curiams in the [fol. 183] event of an appeal. Before rendering judgment, he aptly stated:

"• • • So in referring to my *per curiam*, the question of the *per curiam*, throughout the trial of the case, I want to qualify that to the extent that I intended, and if there be—there was no pre-judging of the case, but if there were intended to be reserved a bill of exception at any time during the trial of the case, my per curiam would further amplify my reasons."

Bill of Exceptions No. 1 is without merit.

Bill of Exceptions No. 2 was reserved to the trial court's overruling of defendant's application for a Bill of Particulars. The application set forth the following questions:

"1.

"What are the exact words, phrases and/or sentences of the statement set forth in the Bill of Information that are alleged to be defamatory as to the judges named in the said Bill of Information?

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[1] Defendant states in brief, "Of course we realize that there was no conscious prejudging of Garrison's case by Judge Ponder. • • • "

"2.

"What are the exact words, phrases and/or sentences contained in the said quoted statement that tend to expose to hatred, contempt or ridicule the judges of the Criminal District Court named in the said Bill of Information, or to deprive them of their benefit of public confidence and social intercourse?

"3.

"Does the State contend that the statement of the defendant set forth in the Bill of Information contains any allegations of fact which are not true?

"4.

"If the answer to Paragraph 3 above is in the affirmative, please set forth the exact words, phrases, and/or sentences containing allegations of fact which are alleged by the State to be untrue."

The State answered the above questions as follows:

[fol. 184] "I.

"The State will rely upon the entire article as quoted in the Bill of Information.

"II.

"The State will rely upon the entire article as quoted in the Bill of Information.

"III.

"The State will contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"IV.

"The entire expression and publication as quoted in the Bill of Information will be used as the basis on the trial as the alleged violation of the statute. The

State will also prove the allegation of fact that the said statement was made and published by the said defendant on the date set forth in the indictment."

In this Court defendant contends that:

"In failing to order the State to tell this accused the exact words, phrases and sentences in the November 2 statement which the State contended were defamatory or untrue, the trial judge abused the discretion vested in him by Article 288 of the Code of Criminal Procedure,[5] R.S. 15:288, to the detriment and disadvantage of the accused. See *State* v. *Butler*, 229 La. 788, 86 So. 2d 906.[6] The statement which forms [fol. 185] the basis of this prosecution is quite long, and the trial court placed an unfair burden on this accused when it denied the Application."

Initially it is to be observed that when a party is charged with criminal defamation, "The words contained in the statement are to be given their ordinary meaning unless

[5] "Defects in indictments can be urged before verdict only by demurrer or a motion to quash, and the accused is not entitled to any bill of particulars as to the subject-matter charged in the indictment, but the trial judge may, in his discretion, require the district attorney to file in the case such data as, in the opinion of the judge, may be sufficient."

[6] In State v. Butler, 229 La. 788, 86 So. 2d 906, the defendant was charged with unlawfully possessing, having under his control, selling, and delivering marijuana. The State refused to answer his application for a bill of particulars. Pertinent information sought was the names of the persons to whom defendant was alleged to have sold and to have delivered the marijuana. This Court granted defendant a new trial, stating, "However, while it is discretionary with the trial judge, he cannot arbitrarily refuse to order the State to furnish 'essential particulars.' That is exactly what the trial judge refused to do in this case." In a per curiam written on refusal of an application for rehearing, we stated that this Court must decide each case on the issues presented; and, in the matter involved, after considering the language of the bill of information, we said that we were of the opinion that the accused was entitled to the information sought so that he could adequately prepare his defense, and that in refusing to order the State to furnish the information the trial judge abused his discretion.

it is shown that they were capable of being used and were in fact used with a different meaning. The meaning of the statement is to be determined from an examination of the statement as a whole. The statement is to be interpreted in the light of the surrounding circumstances, and words apparently innocent may be shown to have been defamatory in fact." Wharton's Criminal Law and Procedure, 1957, Volume II, Section 884, Page 750. In State v. Lambert, 188 La. 968, 178 So. 508, (a prosecution in which the defendant was charged with libel), we held that in analyzing a document and determining its legal effect, the document must be considered as a whole. In interpreting articles of the Louisiana Criminal Code, LSA-R.S. 14:3 provides that the articles of the Code cannot be extended by analogy so as to create crimes not provided for therein; and, in order to promote justice and to effect the objects of the law, all of the provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

Under the circumstances of this case, we find that the State's answer (Art. IV, supra), to the effect that the entire expression and publication as quoted in the Bill of Information would be used as the basis on the trial as the alleged violation of the statute, was sufficient to enable the defendant to adequately prepare his defense. Additionally, the State informed the defendant (Art. III, supra) that it would contend that the statement of the defendant set forth in the Bill of Information constituted malice in law and also malice in fact. We conclude that there was no [fol. 186] need for the State to further particularize exact words, phrases, and sentences.

> "• • • The State is not required to reveal in advance of the trial the facts on which it will rely in seeking a conviction." State v. Mills, 229 La. 758, 86 So. 2d 895, Cert. denied, 77 S. Ct. 51, 52, 352 U.S. 834, 1 L. Ed. 2d 53.

The proper function of a Bill of Particulars is to inform the accused in greater detail of the nature of the crime of

which he is charged. State v. Simpson, 216 La. 212, 43 So. 2d 585, Cert. denied, 70 S. Ct. 625, 339 U.S. 929, 94 L. Ed. 1350. We find that the answer of the State in the instant case performed the proper function of giving the defendant the details he required.

The trial judge exercised the discretion vested in him by LSA-R.S. 15:288 (Footnote 5, supra). We find that he did not abuse his discretion; we also find that the defendant did not suffer prejudice by the trial judge's overruling of the Motion for a Bill of Particulars. LSA R.S. 15:557.

> "The complaint is without substance. The granting or refusal of a bill of particulars addresses itself to the sound discretion of the trial judge. State v. Agusta, 199 La. 896, 7 So. 2d 177; Articles 235, 288, Code of Criminal Procedure. * * * " State v. Poe, 214 La. 606, 38 So. 2d 359.

> "We reiterate that the matter of furnishing a Bill of Particulars rests largely in the discretion of the trial judge, and his discretion will not be disturbed unless there is error in the ruling complained of to the detriment or disadvantage of the accused. * * * " State v. Butler, 229 La. 788, 86 So. 2d 906.

Bill of Exceptions No. 2 is without merit.

Bill of Exceptions No. 3 was reserved to the trial court's overruling of defendant's Demurrer and Motion to Quash, which recites:

> "* * * the said Information and the matters therein are, as therein alleged and set forth, not sufficient [fol. 187] in law to compel him, the said Jim Garrison; to answer thereto, for the following reasons, to-wit:
>
> "1.
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> "That the statement set forth in the Bill of Information attributed to the defendant herein, Jim Garrison, contains no allegations of fact which are defamatory, or which could through any reasonable interpre-

tation, tend to expose to hatred, contempt or ridicule or to deprive of their benefit of public confidence and social intercourse any of the judges of the Criminal District Court therein named as the persons defamed.

"2.

"That the statement set forth in the Bill of Information affirmatively reveals itself to be a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege; that despite the allegation of malice contained in the said Bill of Information herein, the statement attributed to the defendant affirmatively shows the absence of malicious motive; that the said statement shows the utterances contained therein to be in response to a previous public criticism by one Judge William O'Hara, and in defense of the defendant's performance of his duties as District Attorney in combating organized vice operations in the City of New Orleans.

"3.

"That to hold the statement set forth in the Bill of Information to be a violation of Revised Statute 14:47 or to interpret the said R.S. 14:47 defining the crime of defamation so as to include within the scope thereof the statement set forth in the Bill of Information in this case would violate the provisions of the First Amendment of the Constitution of the United States prohibiting abridgment of freedom of speech as the said amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution."

In this Court defendant argues:

"1. *The criminal statutes defining defamation under which the charge against Garrison has been brought, Articles 47-50 of the Louisiana Criminal Code, R.S. 14:47-50, as well as that portion of Article 1, Section 3, of the Louisiana Constitution authorizing such laws,*

are absolutely null and void in that they are prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to that Constitution.

"A. Any law which in any fashion curtails freedom of expression violates the First Amendment to the Federal Constitution.

[fol. 188]. "B. In the alternative, these statutes are phrased in such broad general terms that they cover activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press, and for this reason Articles 47-50 are void.

"C. Articles 47-50 fail to provide the procedural safeguard of a trial by jury which is essential to the protection of First Amendment rights.

"2. *In the alternative it is contended that in the event Articles 47-50 defining the crime of defamation, R.S. 14:47-50, are found not to violate the Federal Constitution, still the accused's conviction of defamation for the statements set out in the bill of information filed herein deprives him of his right to freedom of expression, guaranteed to citizens of Louisiana by the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.*"

Defendant also contends that the trial judge committed error in his refusal to apply the "Clear and Present Danger" test to this prosecution.

In his per curiam, the trial judge states that he would not pass upon defendant's first contention that the statement set forth in the Bill of Information was not defamatory so as to bring it within the statutory provisions of L.S.A-R.S. 14:47, because he did not think that the contention was properly presented on a Motion to Quash. He said that qualified privilege and malice were involved,

and that proof thereof would require evidence, particularly on the issues of truth or falsity.

In State v. Lambert, 188 La. 968, 178 So. 508, we said, "The question as to whether a communication is privileged involves questions of fact as well as of law. State v. Whitmire, 166 La. 195, 116 So. 849. Where the facts are not disputed the question of privilege becomes one of law. Odgers on Libel and Slander, 2d Ed., Sec. 183, p. 216; Newell on Slander and Libel, 4th Ed., Sec. 345, p. 385." In State v. Masino, 214 La. 744, 38 So. 2d 622, we held that [fol. 189] evidence may be taken on a Motion to Quash an indictment, but evidence is limited to procedural matters and may not include a defense on the merits.

In the publication set forth in the Bill of Information, the defendant states, among other things, that, "* * * it is pretty obvious where the real responsibility lies for the revised backlog of untried cases"; that, "* * * so opposed have the judges been to our vice investigations that they completely blocked us off from our Bourbon Street investigations of B-drinking and other forms of vice"; that, "This raises interesting questions about the racketeer influences on our eight vacation-minded judges. * * *"; that, "* * * a man could wait 19 months before his case is disposed of, during which period the judge enjoyed over 300 days vacation"; and that, "There are now approximately 520 prisoners awaiting trial out of a prison population of 758." These are all assertions of fact which require the hearing of evidence.

We therefore find that the trial judge could not have passed upon the contention raised by the defendant in the first paragraph of his Demurrer and Motion to Quash without hearing evidence on matters other than procedural ones; under the jurisprudence, supra, he was correct in his ruling.

In his per curiam, the trial judge further states that he would not pass upon defendant's second contention that the Bill of Information is a comment on the conduct of persons in respect to public affairs and as such protected by a qualified privilege, because, "* * * the defendant would necessarily have to have a reasonable belief as to the truth

of his comment as set forth in LSA-R.S. 14:49.[7] Also, it is [fol. 190] well established that proof of actual malice may destroy a qualified privilege.[8] Therefore, this could only be determined after trial, and was not such as would authorize the sustaining of a motion to quash."

We find that the trial judge was correct in not passing on the second contention raised in defendant's Demurrer and Motion to Quash. Reviewed in association with LSA-R.S. 14:48-49, it shows that it presents matters on which evidence would have had to be heard during trial; it was therefore not subject to the pleadings advanced.

[fol. 191] In our discussion of the third contention raised in the Demurrer and Motion to Quash, we initially observe

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[7] "A qualified privilege exists and actual malice must be proved, regardless of whether the publication is true or false, in the following situations: (1) Where the publication or expression is a fair and true report of any judicial, legislative, or other public or official proceeding, or of any statement, speech, argument, or debate in the course of the same. (2) Where the publication or expression is a comment made in the reasonable belief of its truth, upon, (a) The conduct of a person in respect to public affairs; or (b) A thing which the proprietor thereof offers or explains to the public. (3) Where the publication or expression is made to a person interested in the communication, by one who is also interested or who stands in such a relation to the former as to afford a reasonable ground for supposing his motive innocent. (4) Where the publication or expression is made by an attorney or party in a judicial proceeding."

[8] "Where a non-privileged defamatory publication or expression is false it is presumed to be malicious unless a justifiable motive for making it is shown.

"Where such a publication or expression is true, actual malice must be proved in order to convict the offender." LSA-R.S. 14:48.

"There shall be no prosecution for defamation in the following situations: (1) When a statement is made by a legislator or judge in the course of his official duties. (2) When a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy. (3) Against the owner, licensee or operator of a visual or sound broadcasting station or network of stations or the agents or employees thereof, when a statement is made or uttered over such station or network of stations by one other than such owner, licensee, operator, agents or employees." LSA-R.S. 14:50.

that Article I, Section 3, of the Louisiana Constitution of 1921, provides that, "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, *being responsible for the abuse of that liberty.*" (Emphasis ours.) The First Amendment to the United States Constitution recites that, "Congress shall make no law * * * abridging the freedom of speech * * *." The Fourteenth Amendment to the United States Constitution provides that, "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *".

These constitutional provisions will be considered hereinafter in connection with LSA-R.S. 14:47-50, quoted supra. They will be considered in the light that, "The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state." Schneider v. Irvington, 308 U.S. 147-165, 60 S. Ct. 146, 84 L. Ed. 155.

In Roth v. United States, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498, we find the following statement with respect to the guaranties of freedom of expression:

> "The guaranties of freedom of expression in effect in 10 of the 14 States which by 1792 had ratified the Constitution, gave no absolute protection for every utterance. Thirteen of the 14 states provided for the prosecution of libel,[9] and all of those States made either blasphemy or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or profane song, pamphlet, libel or mock sermon' in imitation or mimicking of religious services. * * *" (Emphasis ours.)
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> [fol. 192] "In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. This

[9] "Libel, slander, and malicious prosecution are all methods of defamation." 53 C. J. S. Libel and Slander, Sec. 1, p. 31.

phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech. Beauharnais v. People of State of Illinois, 343 U.S. 250, 266, 72 S. Ct. 725, 735, 96 L. Ed. 919. * * *

* * * * * * *

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. * * *"

In Beauharnais v. People of the State of Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919, the defendant was charged by information in that he "did unlawfully . . . exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes [sic] citizens of Illinois of the Negro race and color to contempt, derision, or obloquy * * *." Beauharnais challenged the statute under which he was charged as being violative of the liberty of speech and of the press guaranteed as against the States by the Due Process Clause of the Fourteenth Amendment. The United States Supreme Court affirmed the conviction, making the following pertinent statements in its decision:

"The statute before us is not a catchall enactment left at large by the State court which applied it. * * * It is a law specifically directed at a defined evil. * * *"

"Libel of an individual was a common-law crime, and thus criminal in the colonies. Indeed, at common law, truth or good motives was no defense. In the first decades after the adoption of the Constitution, this was changed by judicial decision, statute or constitution in most States, but nowhere was there any suggestion that the crime of libel be abolished. Today, every American jurisdiction—the forty eight States, the District of [fol. 193] Columbia, Alaska, Hawaii and Puerto Rico—punish libels directed at individuals. * * *"

> "Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against criminal libels sanctioned by centuries of Anglo-American law. • • • "
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> "Libelous utterances, not being within the area of constitutionally protected speech, it is unnecessary either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

The United States Supreme Court has considered a number of cases cited by defendant, in which the defendants who were charged with contempt pleaded the protection of "Freedom of Speech." Before discussing these cases, we feel it pertinent to remark that under our Louisiana law the offense of defamation and the offenses of contempt and constructive contempt are not the same.

Constructive Contempt, West's LSA-C.C.P., Art. 224(8), is defined in part as, "Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties."

In Schenck v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470, the United States Supreme Court spoke of "Clear and Present Danger" as follows:

> "• • • The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. • • • "

[fol. 194] In Bridges v. California, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192, the defendants were adjudged guilty and

fined for contempt of court; their convictions rested upon comments published in newspapers pertaining to pending litigation. Defendants challenged the State's action as an abridgment, prohibited by the Federal Constitution, of freedom of speech and of the press. In reversing the conviction, the United States Supreme Court stated in the beginning of its opinion that, "It is to be noted at once that we have no direction by the legislature of California that publications outside the court room which comment upon a pending case in a specified manner should be punishable." The Court went on to discuss the theory of evil, stating, "Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial,' * * *". It found that the evil sought to be avoided was not substantial; it said, "* * * we are convinced that the judgments below result in a curtailment of expressions that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice." [10]

[fol. 195] Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295, concerned contempt proceedings in which the defendant, Associate Editor of the Miami Herald, was charged with being contemptuous of the circuit

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[10] It is interesting to note that the Louisiana State Supreme Court followed the Bridges rule in a contempt proceeding, Graham v. Jones, 200 La. 179, 7 So. 2d 702 stating: "However, under the decision of the Supreme Court of the United States in the Bridges v. California and Times-Mirror Company v. Superior Court case, this proceeding for contempt against respondent must be discharged. * * * As we have pointed out in our opinion handed down today on the rules for contempt against the three New Orleans newspapers, 7 So. 2d 688, the decision of the Supreme Court of the United States in matters of contempt has repudiated the test of reasonable tendency heretofore prevailing and has substituted therefor the test of clear and present danger. Applying that test to the publication under review, we are bound to hold that there was no clear and present danger that the editorial would or could sway the five members of this Court from acting according to their convictions in declaring that the Reorganization Amendment was unconstitutional."

court and its judges, in that he had published two editorials alleged to be unlawfully critical of the administration of criminal justice in certain cases then pending before the court. The United States Supreme Court reversed the conviction of the State Court on the theory of "Clear and Present Danger," stating, "The comments were made about judges of courts of general jurisdiction—judges selected by the people of a populous and educated community. They concerned the attitude of the judges toward those who were charged with crime, not comments on evidence or rulings during a jury trial. Their effect on juries that might eventually try the alleged offenders against the criminal laws of Florida is too remote for discussion. Comment on pending cases may affect judges differently. It may influence some judges more than others. Some are of a more sensitive fiber than their colleagues. The law deals in generalities and external standards and cannot depend on the varying degrees of moral courage or stability in the face of criticism which individual judges may possess any more than it generally can depend on the personal equations or individual idiosyncrasies of the tort-feasor. * * * We are not willing to say under the circumstances of this case that these editorials are a clear and present danger to the fair administration of justice in Florida. Cf. Near v. Minnesota, 283 U.S. 697, 714, 715, 75 L ed 1357, 1366, 1367, 51 S Ct 625."

[fol. 196] Craig v. Harney, 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546, involved contempt proceedings for an editorial challenging a Texas court's procedure. In reversing the conviction, the United States Supreme Court stated:

> "* * * But there was here no threat or menace to the integrity of the trial. The editorial challenged the propriety of the court's procedure, not the merits of its ruling. Any such challenge, whether made prior or subsequent to the final disposition of a case, would likely reflect on the competence of the judge in handling cases. But as we have said, the power to punish for contempt depends on a more substantial showing. Giving the editorial all of the vehemence which the court below found in it we fail to see how it could in

any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing.

"There is a suggestion that the case is different from Bridges v. California * * * in that we have here only private litigation, while in the Bridges Case labor controversies were involved, some of them being criminal cases. The thought apparently is that the range of permissible comment is greater where the pending case generates a public concern. The nature of the case may, of course, be relevant in determining whether the clear and present danger test is satisfied. But, the rule of the Bridges and Pennekamp Cases is fashioned to serve the needs of all litigation, not merely select types of pending cases."

In Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569, defendant, an elected sheriff of Bibb County, Georgia, was held in contempt of court for expressing his personal ideas on a matter that was presently before the grand jury for its consideration; his ideas were conveyed to and published by the local press. In reversing the conviction and holding that defendant's right of freedom of speech had been abridged, the United States Supreme Court stated, "Our examination of the content of petitioner's statements and the circumstances under which they were published leads us to conclude that they did not present a danger to the administration of justice that should vitiate his freedom to express his opinions in the manner chosen."

[fol. 197] As stated supra, Article I, Section 3, of the Louisiana Constitution of 1921, provides that a person speaking or publishing his sentiments is responsible for an abuse of that liberty. LSA-R.S. 14:47-50 were enacted pursuant to this provision, and they are specifically directed at a defined evil. It is unnecessary for us to consider the issues behind the phrase "Clear and Present Danger." See, Beauharnais v. People of the State of Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919, supra. LSA-R.S. 14:47-50 are an expression of Louisiana legislative will and have to do with the exposing of a person

to hatred, contempt, or ridicule so as to deprive him of public confidence or social intercourse. We find nothing in the jurisprudence reviewed supra which prohibits such enactments as are herein under consideration. Also, as stated supra, Louisiana treats defamation and contempt as separate offenses; the jurisprudence we have heretofore reviewed dealt with the offense of contempt. As stated in the Roth and Beauharnais Cases, supra, libel has always been an offense under both common and statutory law. There have been many prosecutions under the libel laws; when the law and the evidence justified it, the person found guilty had a fine or prison sentence imposed on him. Freedom of Speech guaranteed under the Due Process clause of the Fourteenth Amendment has not been extended to those found guilty. See, Roth and Beauharnais Cases, supra; State v. Lambert, 188 La. 968, 178 So. 508, supra.

We conclude that LSA-R.S. 14:47-50 are not null and void and are not prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the States by the Due Process Clause of the Fourteenth Amendment to that Constitution.

Defendant's contention that LSA-R.S. 14:47-50 fail to provide the procedural safeguard of a trial by jury is without merit and will be discussed hereinafter.

[fol. 198] In the instant matter, it cannot be gainsaid that the use of the words "racketeer influences" when applied to anyone suggests and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty.[11]

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[11] racketeer—"* * * a person who obtains money illegally, as by bootlegging, *fraud*, or especially, threats of violence, v.i. to obtain money in any of these ways." (Emphasis ours.)

fraud—"* * * a) deceit; trickery; *cheating*. b) in law, intentional deception to cause a person to give up property or some lawful right. 2. something said or done to deceive; trick; artifice. 3. [Colloq.] a person who deceives or is not what he pretends to be; impostor; *cheat*." (Emphasis ours.)

cheat—"* * * behave *dishonestly* or unfaithfully." (Emphasis ours.)

influence—"* * * 2. a) the power of persons or things to affect others, seen only in its effects. b) the action or

The expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the "Deadhead" statute, LSA-R.S. 14:138, Public Payroll Fraud.

Other expressions set out in the Bill of Information connote malfeasance in office. LSA-R.S. 14:134, Art. IX, Sec. 1, La. Const. of 1921.

We conclude that the expressions of the defendant, as set out and charged in the Bill of Information were of a defamatory nature; they are alleged to be defamatory and to have been made maliciously; they were not subject to the protection of the First Amendment to the United States Constitution. All that we are considering in this Bill of Exceptions is the legal sufficiency of the Bill of Information and defendant's Demurrer and Motion to Quash filed to the Information. The questions of malice and proof of defamation will be discussed hereinafter.

[fol. 199] Defendant's expressions set out in the Bill of Information are not criticisms of a court trial or of the manner in which any one of the eight judges conducted his court when in session. The expressions charged contain personal attacks upon the integrity and honesty of the eight judges which warranted trial on the merits.

Bill of Exceptions No. 3 is without merit.

Bill of Exceptions No. 4 was reserved to the denial by the trial judge of defendant's motion for trial by jury, which motion recites in part:

> "That the provisions of Article 7, Section 41 of the Louisiana State Constitution authorizing trial by the judge alone in cases of misdemeanor is unconstitutional, null and void in that the said State Constitutional provision is in violation of the Sixth and

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effect of such power; 3. the power of a person or group to produce effects without the exertion of physical force or authority, based on wealth, social position, ability, etc. 4. a person or thing that has influence."

Webster's New World Dictionary, World Publishing Co., 1957.

Fourteenth Amendments of the United States Constitution, depriving petitioner of his right to trial by jury and depriving him of due process of law.

"That in the alternative defendant alleges that any issue involving the determination of Constitutional rights in general and the right of freedom of speech in particular must be tried by jury under the requirements of the above mentioned United States Constitutional provisions; that the trial of this case will necessarily involve a determination as to certain fundamental Constitutional rights of the defendant and that the trial of this case without jury would serve to deny to defendant due process of law under the Sixth and Fourteenth Amendments of the United States Constitution."

In this Court defendant advances the same contentions as set forth in his motion for trial by jury; he raises the additional argument that the reasoning and holding of the United States Supreme Court in the case of Gideon v. Wainwright, —— U.S. ——, 83 S.Ct. 792, —— L.Ed. 2d ——, decided March 18, 1963, should be applied to the instant bill.

Article VII, Section 41, of the Louisiana Constitution of 1921, provides:

[fol. 200] "* * * *All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury.* Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict." (Emphasis ours.)

LSA-R.S. 15:340 recites:

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

LSA-R.S. 15:341 states:

> "A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both." [12]

LSA-R.S. 14:47, under which the defendant was charged, provides that, "Whoever commits the crime of defamation shall be fined not more than three thousand dollars, or imprisoned for not more than one year."

Amendment VI to the United States Constitution recites:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

In State v. Hadad, 142 La. 69, 76 So. 243, this Court has held that the provisions of the Sixth Amendment to the United States Constitution relating to jury trials refer to prosecutions for the violation of federal statutes and [fol. 201] not to prosecutions in state courts for violations of state statutes. See, 20 La. L. Rev. 680; Cf. State v. Pailet, 139 La. 697, 71 So. 951. See, also, State v. Harvey, 159 La. 674, 106 So. 28, Cert. denied, 273 U.S. 635, 71 L.Ed. 815, 47 S.Ct. 20.

In State v. Porter, 176 La. 673, 146 So. 465, we have held that parties may waive or renounce what law establishes in their favor, unless expressly or impliedly prohibited by law or public policy. We stated emphatically, however, that, "The law which provides that persons charged with

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[12] In Green v. United States, 356 U.S. 165, 78 S.Ct. 632, the United States Supreme Court held that Criminal Contempt cases are not subject to jury trial as a matter of constitutional right. Cf. Loyola Law Review, 1961-62, p. 49.

capital offenses or those necessarily punishable by imprisonment at hard labor shall be tried by juries was made in the interest of both the accused parties and the state and neither is permitted to derogate from it. State v. Thompson, 104 La. 167, 28 So. 882; State v. Jackson, 106 La. 189, 30 So. 309." Cf. Patton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854.

In State v. Livaudais, 161 La. 882, 109 So. 536, we stated:

> "The responsibility resting upon the trial judge, and the latitude of discretion invested in him, in a prosecution for libel is exceptionally great. The penalty is either fine or imprisonment, or both, at the discretion of the judge. Rev. Stat., Sec. 804. In such case, the fine may be as great as $1,000, or as small as the judge deems fit; and the term of imprisonment may be as long as two years, or as short as the judge deems fit. Rev. Stat. Sec. 982. The imprisonment being without hard labor, the case must be tried by the judge, without a jury. Const. art. 7, Sec. 41, p. 50. The defendants in such case have no right of appeal, unless the judge sees fit to impose a fine exceeding $300, or imprisonment for a term exceeding six months, and even then, there is no appeal fom the judge's findings of fact on the question of guilt or innocence. Const. art. 7, Sec. 10, par. 7."

In Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595, Betts was indicted for *robbery*. He was unable to employ counsel, and he was refused his request for such after informing the trial judge of his indigent position. Without waiving his asserted right to counsel, he pleaded not guilty and elected to be tried without a jury. The judge found [fol. 202] him guilty and imposed a sentence of eight years. Betts applied for Habeas Corpus while serving his penitentiary term; the writ was granted, but relief was denied by the State court. The United States Supreme Court granted Certiorari and affirmed the lower court, stating:

> "The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the

Sixth Amendment although a denial by a state of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate, in a given case, to deprive a litigant of due process of law in violation of the Fourteenth. * * *"

In Gideon v. Wainwright, supra, Gideon was charged in a Florida State court with having broken and entered a poolroom with intent to commit a misdemeanor. *This offense is a felony under Florida law.* Gideon was unable to employ counsel, and his request for such was denied by the court. He conducted his own defense and was found guilty by a jury; he was thereafter sentenced to serve five years in the penitentiary. The United States Supreme Court granted Certiorari to review a decision of the Florida Supreme Court on hearing of a Writ of Habeas Corpus to the effect that refusal to appoint counsel for Gideon did not deprive him of his constitutional rights. Betts v. Brady, supra, was reviewed; with respect to its holding in that case, the United States Supreme Court stated:

"We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this Court, after full consideration of all the historical data examined in Betts, had unequivocally declared that 'the [fol. 203] right to the aid of counsel is of this fundamental character.' Powell v. Alabama, 287 U.S. 45, 68, 53 S.Ct. 55, 63, 77 L.Ed. 158 (1932). * * *

* * * * * * *

"The Court in Betts v. Brady departed from the sound wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should be overruled. We agree."

Since the present defendant was only charged with a *misdemeanor,* and the defendants in the Betts and Gideon Cases were charged with a *felony,* we do not think that the cases are apposite. As stated supra, Article VII, Section 41, of the Louisiana Constitution of 1921, provides that a defendant in a *felony case shall be tried by a jury.* In State v. Porter, supra, we held that trial by jury cannot be waived in certain instances.

We do not think that a comparison can be made between a request for counsel in a felony case and a request for trial by jury in a misdemeanor case. In one instance, there is an indigent defendant who cannot afford to have his defense properly presented asking for counsel to be appointed by the court to represent him; in the other, the defendant objects to trial of a misdemeanor by a skilled trier of facts and law (his responsibility is set out in State v. Livaudais, supra) and asks for trial by jury. We conclude that Gideon v. Wainwright, supra, is not controlling of the instant prosecution; here the defendant neither suffered prejudice nor deprivation of due process of law under the Fourteenth Amendment.

We conclude that the provisions of Article VII, Section 41, of the Louisiana Constitution of 1921, authorizing trial by the judge alone in misdemeanor cases, are constitutional. We find no prohibition against such provisions in the Con-[fol. 204] stitution of the United States or in the decisions of the United States Supreme Court.

Bill of Exceptions No. 4 is without merit.

Bill of Exceptions No. 5 is neither a part of the record nor argued in the State's or defendant's brief. We conclude that it has been abandoned.

Bill of Exceptions No. 7 is not a part of the record; it is not included in the State's brief, and it is only mentioned by number in the defendant's brief. We conclude that it has been abandoned.

Bills of Exceptions Nos. 6, 8, 9, and 11 will be included under one heading because of their similarity of content.

Bill of Exceptions No. 6 was reserved when the trial court permitted the State to ask Arthur Roane (a news-

paper reporter for the Times-Picayune, a New Orleans paper, who had previously testified that he was present in the District Attorney's office on the morning of November 2, 1962, and that the defendant had made a statement to him), "Did you make a report of this statement to your paper?" The objection of counsel for the defendant was to the effect that the Bill of Information charges defamation resulting from the publication in the New Orleans States-Item, and that the defendant was not charged with defamation as a result of publication in the Times-Picayune. He contended, "That statement is irrelevant and immaterial that he reported to the Times-Picayune."

The ruling of the trial court with respect to Bill of Exceptions No. 6 recites:

> "* * * The Court rules that solely for the purpose of showing *malice*, this evidence will be admissible and is restricted to the question of showing *malice*. There [fols. 205-206] has been raised in the preliminary motion filed herein the question of a qualified privilege by the Defendant and if the Court finds that it was in fact a question of law, that there is a qualified privilege, then the burden of proof would shift to the Plaintiff—to the State—to show malice—actual malice, regardless of the truth or falsity of the statement. So for that reason, the evidence is admitted solely for the purpose of showing *malice*. Now, you may answer the question and you may reserve your bill." (Emphasis ours.)

Bill of Exceptions No. 8 was reserved when the trial judge permitted the following testimony of Arthur Roane:

> "Q. Did he make a statement to you on November 9?
>
> "A. I suppose he did. He makes statements to me very often.
>
> "Q. Did he make a statement to you that he threatened to take racketeering influences of the Judges to the Grand Jury?
>
> * * * * * * *
>
> "Q. What was Mr. Garrison's statement to you?

"A. You are referring to this particular question there?

"Q. The article that you just refreshed your memory on.

[Discussion.]

"Q. Did Mr. Garrison make that statement to you?

"A. Yes. I don't know if it was on the particular date preceding this paper but he has said that to me."

In overruling the objection of counsel for the defendant to the above testimony, the trial judge stated, "The statement is admitted for the purpose of showing malice and Courts have held that statements made even after the time are admissible if they are connected with it."

Bill of Exceptions No. 9 was reserved when the trial judge permitted Jack Kneece, a General Assignment Re-[fol. 207] porter for the Times-Picayune, to testify with respect to his coverage of a meeting of the Press Association in the International Trade Mart Building on Saturday night, January 12, 1963. His testimony is to the effect that the defendant spoke for fifteen to twenty minutes at the meeting, and that part of the speech was directed to the question of racketeering influences on the judges involved.

In admitting the testimony of Kneece, the trial judge stated that he refused to strike the evidence from the record for the reason that "it was found to be introduced under the general ruling that the statement he made with reference to this case was admissible only for the purpose of showing malice, and the evidence is restricted to that and to that alone."

Bill of Exceptions No. 11 was reserved when Robert Kelso, a newspaper reporter for the States-Item, was permitted to testify according to his recollection with respect to parts of a talk given by the defendant on January 11, 1963, at the Monteleone Hotel. Kelso's testimony was with respect to statements made by the defendant with regard to the eight judges herein involved and was admitted for the purpose of showing malice.

In this Court defendant argues that:

"The trial judge erred in admitting these other statements of the accused in evidence at this trial on the theory that they were admissible under Article 445-446 of the Code of Criminal Procedure, R.S. 445-446 to show malice on the part of the accused, which the State would have to prove should the court hold that the November 2 statement was privileged. * * * These other statements of the accused involved in these bills were also comments upon the conduct of the Judges in respect to public affairs, made by the accused in the reasonable belief of their truth, and hence they also were privileged, and malice could not be inferred from these privileged statements any more than it could be inferred from the November 2 statement. The State [fol. 208] had the burden in this proceeding of establishing malice on the part of the accused toward the Judges by positive evidence tending to show that the accused felt hatred and ill will toward the Judges and wanted to hurt them, and that this hatred, ill will and desire to injure on his part was the motivating cause of this November 2 statement. See Clark and Marshall, Crimes, p. 76, Sec. 48 (1952); *State v. Lambert*, 188 La. 968, 178 So. 508. The State completely failed to offer any evidence of this type; instead, the State's witnesses testified that the accused showed and expressed no hostility toward the Judges, but was actuated by the belief that a public wrong had been committed and that it was his duty to inform the public of this fact. * * * The basis of the trial judge's holding that Garrison acted from malice in this matter is that these other statements of the accused reveal malice on his part. * * * Thus, prevented by the statutes and jurisprudence of this state from inferring malice from the November 2 statement, he inferred it from the other privileged statements!

"The trial judge erred in admitting these other statements in evidence, and he doubly erred in using them to impute malice to Garrison. If malice cannot be inferred from one privileged publication, how can it be

inferred from three other equally privileged publications?"

In answer to the Application for a Bill of Particulars the State said that it would contend that the statement of the defendant set forth in the Bill of Information constitutes malice in law and also malice in fact.

"Under the express terms of the statute, malice is an ingredient of the crime of libel. Without malice there can be no criminal responsibility. The general rule is, that legal malice, which in law means a wrongful act done intentionally, without just or lawful excuse, is sufficient to support a charge that the publication is libelous. And malice is presumed by the publication. But the rule has its limitations in cases of privileged communications. State v. Bienvenu, 36 La. Ann. 378. Where the comunication is privileged, malice is not presumed by law. Berot v. Porte, 144 La. 805, 81 So. 323, 3 A.L.R. 1651. In such communications the privilege can only be destroyed by actual malice, legal malice is not sufficient for the purpose.

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"If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal [fol. 209] prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438.". State v. Lambert, 188 La. 968, 178 So. 508.

"There is much confusion with respect to the use and meaning of the term 'malice' in the law of defamation. In one sense it denotes merely the absence of lawful excuse or privileged occasion; in another it denotes ill will, evil motive, intention to injure, or wanton disregard of the rights of others." 53 C.J.S. Libel and Slander, Sec. 2, p. 35.

"In its popular sense, the term 'malice' means hatred, ill will or hostility to another, but this is not neces-

sarily its meaning in law. In its broadest legal sense, it means the state of mind of a person, irrespective of his motive, whenever he consciously violates the law. Under this concept every person who is sui juris, and who, without justification or excuse, wilfully does an act which is prohibited and made punishable by law as a crime, acts maliciously. * * *

* * * * * * *

"*Express and Implied Malice.*—Malice is divided into express and implied malice. Express malice * * * is actual malice, or malice in fact, and exists when a person actually contemplates the injury or wrong which he inflicts,—as when a man shoots at another with the intent to kill him.

"Implied malice * * * otherwise called constructive malice, or malice in law, is where the law implies or imputes malice because of the nature of the act done, and irrespective of the actual intent of the party. * * * *" Clark and Marshall, Crimes, Sec. 5.05, p. 248.

"Various facts may be considered in determining the existence of malice. Evidence of ill feeling, unfriendly relations, and trouble between accused and the victim of an offense, and evidence concerning the conduct and sayings of the accused shortly before and after the offense was committed, are admissible for such purpose. * * * " Wharton's Criminal Evidence, Sec. 165, p. 320.

[fol. 210] As stated in the above quotations, "malice" is many things. Herein, the defendant pleaded a qualified privilege, and the State, as plaintiff, assumed the burden of proving malice. In offering the present testimony to which objection was raised, the State was not concerned with prior or subsequent defamations; it was merely trying to show by similar statements the malice it had previously alleged with respect to the Bill of Information. In his Per Curiam to Bill of Exceptions No. 8, the trial judge pertinently stated:

"In an attempt to prove malice it is impossible to probe the heart or mind of the defendant to ascertain

> whether or not there was malice, hatred, ill will or enmity or a wanton desire to injure, but the best proof of that state of mind is what he says and does with reference thereto, both before and after the defamatory statement is published if it be in connection with the defamation charged."

We agree with the trial judge that intent is involved in malice. In order to show intent, evidence is admissible of similar acts, independent of the act charged as a crime in the Information, for though intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction. LSA-R.S. 15:445.

> " • • • 'Other words than those laid in the petition, and spoken at other times, but within one year before the inception of the suit, may be given in evidence, for the purpose of showing malice in the defendant.'" Kendrick v. Kemp, 6 Mart. (N.S.) 500.

Under Relevancy, in Jones on Evidence, Civil and Criminal, Fifth Edition, Vol. 1, Sec. 159, p. 285, it is well stated:

> "The generally recognized rule is that 'When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved, if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice or other state of mind, or of any state of body or bodily feeling, the existence of which is in issue or is deemed [fol. 211] to be relevant to the issue; but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner.'" See, 53 C.J.S. Libel and Slander, Sec. 214(b), p. 323.

Because the trial judge, the State, and the defense were concerned with malice in the instant prosecution, we find that the trial judge properly admitted the testimony, supra, to which counsel for the defendant objected and made the basis of these bills.

Bills of Exceptions Nos. 6, 8, 9, and 11, are without merit.

Bills of Exceptions Nos. 12, 13, and 14 are not a part of the record, and they are not argued in the State's brief nor in the defendant's brief. We conclude that they have been abandoned.

Bills of Exceptions Nos. 10, 15, 16, and 17 will be discussed jointly; the matters therein involved are similar.

Bill of Exceptions No. 10 was reserved when Malcolm V. O'Hara, Judge, Section "A," Criminal District Court, was asked the following question, "As a result of the statement made by Mr. Garrison that I referred to, have you been affected in any way?" and he responded, "Well, I am going to have to answer that this way: Naturally, being in public office and having held public office for a number of years, I know a number of people, and the impression that I get from the people who discuss this matter with me—it is done in the following ways: People jokingly ask me if it is true that we get all these vacations, whether or not I am a sacred cow, or whether I am influenced by racketeers. It is no one person or nothing specific; it is a cumulative sort of a thing done in a joking sort of manner, but the one thing—my one impression out of the thing, if this is admissible—is that the bench, the criminal bench, seems to be getting the worst of pub- [fol. 212] lic opinion, that the bench has suffered to some extent as a result of it, but nobody has hit me or threatened me or anything like that."

Objection to the above testimony was predicated on the grounds that it was based on impression and on hearsay. In admitting this testimony the trial court stated that it was "allowing the evidence to stand solely for the purpose of showing whether there was any reaction of the public, without the details of the reaction, if there was any reaction of the public to the public article such as it would bring it within the intendment and the definition of *defamation* as set forth in the Revised Statutes, Title 14, Section 47, and restricting it to that. * * *"

Bill of Exceptions No. 15 was reserved when Shirley G. Wimberly, Judge, Section "G," Criminal District Court, was permitted to give the following testimony:

"Q. Judge, the statement that Mr. Garrison made, has it subjected you to ridicule?

"A. Yes, it has.

"Q. Would you tell the Court how?

"A. Well, I have received many telephone calls of derision."

The objection to the foregoing testimony was based on the ground that it was strictly hearsay. The ruling of the trial court was as follows:

"The Court rules that the testimony is admissible, that there has been a public reaction by reason of the alleged defamatory statement. There would be no other way of showing that the publication alleged to be defamatory and exposed the person claimed to be defamed to hatred, contempt or ridicule or to deprive him of the benefit of public confidence or social intercourse, as provided in the Revised Statutes, Title 14, Section 47, dealing with defamation and the subsequent articles on the same subject. The Court rules at this time that what was said to the witness would be hearsay evidence but the fact that a statement was made to him would not be hearsay evidence if [fol. 213] the statement itself is not in evidence, but there is no way to show otherwise that he has been subjected to this injury or to defamation, other than the fact that there was a communication to him showing the public pulse or the public reaction to the statement that was made. * * *"

Bill of Exceptions No. 16 was reserved when Oliver Paul Schulingkamp, Judge, Section "F", Criminal District Court, was permitted to answer the following question, which he answered affirmatively:

"Since the publication of this statement by Mr. Garrison about the Judges, have you been subjected to ridicule, embarrassment and so forth as the result of the publication of said article?"

The objection to this question was based on the grounds that it would be purely speculation for the witness to state

facts in answer to the question, and that his response would be purely his impression and thus hearsay.

The trial judge's ruling with respect to Bill of Exceptions No. 16 was similar to that given to Bills of Exceptions Nos. 10 and 15.

Bill of Exceptions No. 17 was reserved when Thomas M. Brahney, Jr., Judge, Division "D", Criminal District Court, was permitted to testify as to whether he had been subjected to hatred, contempt, and ridicule as a result of the publication of November 2, 1962.

The objection to the question was based on the ground that the witness would not be in a position to know, except in his own opinion, whether anything that occurred to him after the alleged statement of Mr. Garrison was actually due to the statement. It was contended that the testimony would be irrelevant, immaterial, and not pertinent to the case. The trial judge gave the following ruling with respect to the objection:

> [fol. 214] "The Court is of the opinion that the evidence is admissible because there is no other way to show that he has been subjected to any hatred, contempt and ridicule and deprived him of the confidence or social intercourse, as stated in the statutory language, as stated in Revised Statutes Title 14, Section 47, within the intendment of that statute. He would be the only one who might or might not know. If he said that he knows that he has been subjected, I think he has a right to testify to that fact as to whether or not he has."

In this Court defendant contends that the trial judge's rulings, supra, which he incorporated in his per curiams to the instant bills, were a violation of LSA-R.S. 15:434 which provides that hearsay evidence is inadmissible, except as otherwise provided in the Code of Criminal Procedure.

We agree with the reasoning of the trial judge to the effect that when a person has been defamed, he has been exposed to hatred, contempt or ridicule (LSA-R.S. 14:47), and that the person's testimony with respect to such ex-

posure is proof of an essential ingredient of the crime charged—Defamation—and is not hearsay.

We conclude that the testimony of each of the four judges was not hearsay; it was given to prove an ingredient of the offense herein charged and alleged. The trial judge has correctly stated the law in his rulings, and we find no abuse of his discretion.

Bills of Exceptions Nos. 10, 15, 16, and 17, are without merit.

Bill of Exceptions No. 18 was reserved when Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, a witness called on behalf of the State, was permitted to answer the following question:

> "Q. Has the District Attorney called upon you for any more help with reference to the vice investigations?
> "A. No, sir, he has not."

The ground of objection was that the question was misleading and involved matters not herein concerned.

[fol. 215] We do not find that the question was misleading. The following statement of the trial judge reflects his reason for admitting the testimony and shows that he committed no abuse of discretion:

> "At this time, the Court will state that it appears that one of the triggering causes of the giving of the statement on November 2, 1962 by Mr. Garrison to the press, on which this charge of defamation was made, was that this arose by reason of a dispute as to the investigations to be made and the right for the investigation to be paid for by the District Attorney. Throughout the record there have been, without objection, discussions of whether or not the last paragraph—I believe it is the last paragraph of Title 15, Section 571.11—as to the disposition of fines and forfeitures, concerning the disposition to be made and the right to the use thereof by the District Attorney of Orleans Parish. That has gone on throughout the trial of this case.

"There has been injected into this case, without objection, the question as to whether or not that paragraph of that particular act, which is an amendatory act, is unconstitutional, is violative of the constitutional provisions with reference to the Charter of the City of New Orleans, in which it was the contention of the Judges, and so testified to by them without objection, that they considered it unconstitutional for the reason that the police powers of the City of New Orleans were vested solely in the Police Department under the Home Rule Charter and under the constitutional provisions with reference to the Charter of the City of New Orleans. Therefore, the Court considers that it is very vital to a correct consideration of this as to whether or not this Defendant might or might not have called upon the City of New Orleans for additional help in addition to the police which were assigned to him, and I believe that there is no dispute that at least 12 policemen of his own choosing were assigned to his office at his request. That is not disputed. Therefore, the Court is of the opinion that it is perfectly permissible to show whether or not the District Attorney at any time called upon the Police Department of the City of New Orleans for additional help. * * *"

Bill of Exceptions No. 18 is without merit.

Bill of Exceptions No. 19 is neither made a part of the record nor argued in brief. We consider that it has been abandoned.

[fol. 216] Bill of Exceptions No. 20 was reserved when the trial judge rejected Proposition of Law No. Eleven. Counsel for the defendant presented the charge to the court before argument in the same fashion as a charge would have been presented had the case been tried by a jury; it recited:

"Publications made in the discharge of a public duty under authority of law are privileged. Burdick, Law of Crime, v. 3, p. 166, sec. 795; see *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So. 2d 222."

In this Court counsel for the defendant states:

> "Defense counsel objected to the rejection of Proposition of Law No. 11 for the reason that the testimony of all of the complaining witnesses shows that Mr. Garrison's actions in this case arose directly out of his duties as District Attorney for the Parish of Orleans; that this is factually supported by all of the testimony in the entire record; that he was discharging a public duty when this controversy arose; and further that he has the duty, as a matter of law, to inform the public on the conduct of his office, and if he is thwarted in the operation and conduct of his office, then he has the duty to inform the public why he is being thwarted. * * *"

Section 795 of the Law of Crime, William L. Burdick, p. 165, recites:

> "There are some exceptions to the general common law rule that written and published defamation is criminally libelous even if it is true, since certain occasions are privileged on the ground of public interest and policy. Privileged occasions are either absolute or qualified. They are absolute when the law protects them with absolute immunity from any prosecution, either civil or criminal, although the publication may be knowingly false and with express malice. Absolute privilege is limited, however, to proceedings in which the public service and the administration of justice require absolute freedom of expression, regardless of truth, such as legislative and judicial proceedings, matters involving military affairs, and publications made in the discharge of public duty under authority of law, or made to the heads of departments of the state. The law regards these occasions as absolutely privileged since they are of such public importance that the utmost freedom of expression, spoken [fol. 217] or written, is deemed necessary for those whose duty it is to take part in them, regardless of the possible incidental defamation of any individual."

In Deshotel v. Thistlethwaite, supra, Deshotel, an attorney, brought suit against Thistlethwaite, Editor and Publisher of the Daily World Newspaper, for damages allegedly resulting from defamatory remarks made by Thistlethwaite in a television appearance. Thistlethwaite's defense of truth was found to have no merit. This Court then considered his alternative defense of fair comment and criticism alleged to be enjoyed as a qualified privilege; it held:

> "The law relied on here by appellant is incorrectly stated, and the cases cited are for the most part inapposite, as statements made relative to the actions of a candidate for public office are not, under Louisiana law, qualifiedly privileged even though false. * * *
>
> * * * * * * * *
>
> "The cases relied on by counsel for Thistlethwaite in connection with his argument that even false statements about public officials are privileged * * * are easily distinguishable. They deal with the conditional privilege which shields the statements of one who has a special duty to speak. See Prosser, Law of Torts (2d ed. 1955) pp. 614-617. *To be actionable such statements must have been made maliciously,* with knowledge of their falsity. * * * And although it can be argued that appellant's position in the case at bar derives some support from language appearing in our decision in Flanagan v. Nicholson Publishing Company, 137 La. 588, 68 So. 964, L.R.S. 1917E, 510, this court has pointed out in subsequent decisions that the Nicholson case is only authority for the proposition that Louisiana recognizes the doctrine of qualified privilege respecting fair comment and criticism of public officers and men in public life, but that 'the privilege does not extend to the publication of false statements of fact concerning public officers.' Martin v. Markley, 202 La. 291, 11 So. 2d 593, 594; Kennedy v. Item Co., 213 La. 347, 34 So. 2d 886." (Emphasis ours.)

In rejecting the Proposition of Law, supra, the trial court found that it had no application to the facts of this

[fol. 218] case and was not a full and correct statement of the law; in its per curiam it stated:

> "* * * It was further rejected for the reason that it would require an extended qualification, explanation and limitation if it were applicable. Further, the statement was incomplete, and under these circumstances the court was not required to charge this: LSA-R.S. 15:390,[13] and cases thereunder.
>
> "Further, it was rejected as not a complete and correct statement of the complete ruling in the case of Deshotel v. Thistlethwaite, cited."

After reading the Deshotel case, supra, we agree with the finding of the trial judge herein that the Proposition of Law does not contain the complete and correct holding of the case.

It is to be noted that the defendant relied on privilege, and the State contended that the expression of the defendant constituted malice in law and also malice in fact. Malice is presumed where a non-privileged publication or expression is false (LSA-R.S. 14:48); where a qualified privilege exists, malice must be proved (LSA-R.S. 14:49). With respect to the statement from Burdick, supra, the trial judge correctly found:

> "This was a Proposition of law taken out of context of the author and was subject to qualification, explanation and limitation in a consideration of the whole of the article. In the discharge of a public duty under authority of law, or a public officer in informing the public of the conduct of his office, it should be that the publication would be true in the discharge of a public duty, asserting legitimate reasons, rather

[13] "The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter contained in such charge have been already given, or unless such charge require qualification, limitation or explanation." LSA-R.S. 15:390.

than a false defamatory statement imputing wrongdoing to another public officer without any facts to justify it. * * * " See, State v. Turner, 228 La. 202, 81 So. 2d 861.

The trial judge made the following factual finding:

[fol. 219] "I did not find that the statement made by the defendant was a publication made in the discharge of a public duty altogether, but was a defamatory statement of fact maliciously made, and not a comment alone upon admitted facts; but he went beyond that and made statements of fact which were false.

"Further, I did not find that this charge was *wholly correct* and *wholly pertinent* to the facts in this case. Also, I found that it would require an even more extended qualification, explanation and limitation if it were applicable."

Under his factual finding, the trial judge was correct in rejecting Proposition of Law No. Eleven.

Bill of Exceptions No. 20 is without merit.

Bills of Exceptions Nos. 21, 22, and 23 will be jointly discussed.

Bill of Exceptions No. 21 was reserved when the trial court qualified Proposition of Law No. Thirteen, which had been submitted to it prior to argument; it recites:

"Article 1, Section 3, of the Louisiana Constitution and the First Amendment to the United States Constitution require that persons be given the opportunity to inform the community of both sides of an issue of public interest. The purpose of these constitutional guarantees is to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have

conferred upon them. Cooley's 2 Constitutional Limitations (8th ed. 1927) 885; *Wood* v. *Georgia*, 370 U.S. 375."

The trial court qualified Proposition of Law No. Thirteen by pointing out that Article I, Section 3, of the Louisiana Constitution of 1921, was not a part of the holding in the case of Wood v. Georgia, supra. This section provides that a person is responsible for the abuse of liberty of speech or of the press.

[fol. 220] In this Court defendant ayers in brief:

> "The accused, through his counsel, excepted on the ground that *Wood* v. *Georgia* dealt with freedom of speech, and it is immaterial whether freedom of speech is challenged through the medium of contempt proceedings or criminal defamation proceedings—if freedom of speech protects an individual, it protects him against all challenges. * * *"

Bill of Exceptions No. 22 was reserved when the trial court rejected Proposition of Law No. Fourteen, which recites:

> "The role that elected officials play in our society makes it imperative that they be allowed freely to express themselves on matters of current public importance. The First Amendment to the United States Constitution affords an absolute privilege to an elected official who expresses himself on such matters. *Wood* v. *Georgia*, 370 U.S. 375."

The trial judge rejected the Proposition, because he "did not find that the Constitution of the United States or the Constitution of the State of Louisiana grants an *absolute* privilege to make *any* statement, particularly a false defamatory or derogatory statement, simply because a person is an elected official, in commenting on matters of public importance, and in so doing, make unsubstantiated and false statements of fact regarding other persons, rather than commenting upon admitted facts, and the party defamed would have no legal remedy."

In this Court defendant avers:

> "Defense counsel excepted to this rejection, pointing out that Article 1, Section 3, of the Louisiana Constitution cannot bar the accused's rights under the First Amendment to the United States Constitution, and further that the record in this case disclosed that Mr. Garrison was an elected official with a duty to the people of the Parish of Orleans, and that thus Proposition of Law No. 14 is pertinent in this case. • • •"

Bill of Exceptions No. 23 was reserved when the trial court rejected Proposition of Law No. Sixteen, which recites:

> [fol. 221] "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for the expression. Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgment of the right of free speech. Wood v. Georgia, 370 U.S. 375."

After differentiating the instant prosecution from Wood v. Georgia, supra, the trial court found:

> "It goes without saying that principles of law are applied to the facts in the case, and I did not find this *wholly correct* or wholly pertinent to the facts in this case; particularly that it was a partial statement taken out of context on an entirely different factual situation."

Defendant avers in this Court:

> "Through counsel, the accused objected, stating that if the cloak of freedom of speech is present, it protects the accused in this case from all challenges to that freedom, including charges of criminal defamation, and that the rights guaranteed to the accused by the United States Constitution cannot be abridged by the law, jurisprudence, or Constitution of the State of Louisiana. • • •"

We find no merit in Bills of Exceptions Nos. 21, 22, and 23. Our reasons for such finding are set forth in our lengthy discussion of Bill of Exceptions No. 3, which in part pertained to similar matters. The trial judge was correct in his rulings; his reasoning in distinguishing Wood v. Georgia, supra, from the instant prosecution in his per curiams to the instant bills is very similar to that of this Court in Bill of Exceptions No. 3. He did not abuse his discretion nor commit error with respect to the provisions of LSA-R.S. 15:390, supra.

Bills of Exceptions Nos. 21, 22, and 23, are without merit.

Bill of Exceptions No. 24 was reserved when the trial court qualified Proposition of Law No. Seventeen, which recited:

> "Actual malice cannot be inferred from any qualifiedly privileged statement. It must be proven by [fol. 222] extrinsic evidence of hatred, ill will or the wanton desire to injure on the part of the accused."

The trial judge qualified the Proposition by the following statement from State v. Lambert, 188 La. 968, 178 So. 508:

> "If the privilege is only qualified the onus lies on the plaintiff in a civil suit or on the State in a criminal prosecution of proving actual malice. This may be done either by extrinsic evidence of personal ill feeling or by intrinsic evidence, such as the exaggerated language, the mode and extent of the publication, and other matters in excess of the privilege. Odgers on Libel and Slander, 2d Ed., p. 438."

In his per curiam to the instant bill, the trial judge sets forth, as follows, his further reasons for qualifying the Proposition:

> "My reason for qualifying it was that my impression was that it sought *to restrict the proof of actual malice to extrinsic evidence only, of hatred, ill will or wanton desire to injure on the part of the accused.*
>
> "Actual malice is susceptible to other definitions also and could be proven by extrinsic evidence under those

definitions, and the State is not restricted in proving actual malice by any other legal means.

"It was also qualified by the provisions of LSA-R.S. 14:49, which provides that the State must prove actual malice, whether the statement is true or false, under the provisions of said article.

"Counsel for defendant * * * made the statement as to how he appreciated the ruling in that the effect was that the State must prove malice in cases only involving qualified privilege. I do not see how this appreciation was arrived at as I was discussing nothing more than the law of actual malice and a qualifiedly privileged statement as requested by counsel.

"Counsel has in this bill of exception set up an additional explanation after ruling, stating his reasons therefor the proof of malice in all cases. This question could not be raised after the requested charge was given because there was no request made of the court for a charge as to the law on a non-qualifiedly privileged statement or legal malice. Therefore, counsel has set up in this bill of exception the question of legal [fol. 223] malice where there is no qualified privileged statement, which was not requested of the court in the charge; and, of course, this additional reason asserted after the court has ruled on the proposition of law submitted does not make it a proposition of law or a charge that should have been passed upon and should form no part of the bill of exception. It is a recognized principle of law that a judge is presumed to know the law and does not have to charge himself on any question of law not requested in a misdemeanor case tried by the judge alone.

"The requested charge was *granted* but was qualified for the reason that it was not a complete statement of the law of proof of actual malice and was not a *wholly* correct statement of the law as applied to the facts in this case."

In the present bill of exceptions, counsel for the defendant avers that he objected to the ruling of the trial judge for the reason "that the State must prove malice in all cases

of criminal defamation, whether a qualified privilege exists or not; that in cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all cases of criminal defamation."

In this Court, counsel for the defendant sets forth in brief:

> "The basis of the defense's exception here is that the State must prove malice in all cases of criminal defamation, not just in cases involving a qualified privilege. * * * In cases of qualified privilege the State must prove actual malice; in cases where the qualified privilege does not exist, the State must prove legal malice. The State must carry the burden of proof of malice in all defamation cases, not just in those defamation cases in which the defendant has a privilege.
>
> "The above, and the trial judge's per curiam to this bill, * * * are good examples of the confusion which existed in the trial judge's mind about what the State had to do in this case to prove malice. As we have already stressed in this brief, the State introduced no evidence to show hatred, ill will or a wanton desire to injure the Judges on the part of the accused. What the State did introduce in evidence at the trial, over the objection of defense counsel, were several other [fol. 224] privileged statements of the accused, also made, like the November 2 statement, in a reasonable belief of their truth and without malice. As he tells us in his Reasons for Judgment in this matter, the trial judge bases his holding of malice on Garrison's part on these other *privileged* statements. According to the trial judge, these other privileged statements 'show the state of mind that the Defendant had on and from the date of the original defamation up to and including the date the last one was issued and convince me that it was a steadfast position of ill will and enmity arising out of a dislike of the fact that the Judges refused to sign certain motions for him.'"

As stated throughout this opinion, the defendant pleaded "qualified privilege," and the State contended that the statement of the defendant constituted malice in law and malice in fact. LSA-R.S. 14:49 provides that actual malice must be proved where a qualified privilege exists under certain enumerated circumstances; the statute does not restrict the proof of malice to extrinsic evidence. We find no prohibition in the law or in the jurisprudence which forbids the use of intrinsic evidence in a prosecution such as the instant one; neither do we find a limitation or restriction. The trial judge was therefore correct in qualifying Proposition of Law No. Seventeen. (See our discussion of Bills of Exceptions Nos. 6, 8, 9 and 11, supra.) Cf., Miller, Smith and Champagne v. Capital City Press, 142 So. 2d 462; Jenkins v. D X Sunray Oil Co., 297 F. 2d 244.

The trial judge was correct in stating that after he had given his ruling to Proposition of Law No. Seventeen, he could not be compelled to expand to matters not requested in the Proposition—the proof required in *all* cases of defamation.

Bill of Exceptions No. 24 is without merit.

Bill of Exceptions No. 25 was reserved to the ruling of the trial judge in denying defendant's Motion for a New Trial.

[fol. 225]. The Motion reurges all of the objections previously raised in Bills of Exceptions Nos. 1 through 24, and with respect to these matters nothing new is presented for our consideration. We have answered the arguments in discussing the bills, all of which we have found to be without merit.

The Motion avers that there is no evidence in the record to support the judgment of the trial court. We have read the transcript of testimony (consisting of 741 pages), as well as the numerous pleadings hereinbefore discussed; we have also read the defendant's brief (94 pages) and the State's brief (43 pages), and we find that there is evidence to support the judgment. Where there is some evidence to sustain the conviction, this Court cannot pass upon the

sufficiency thereof. State v. Copling, 242 La. 199, 135 So.2d 271; State v. McDonell, 208 La. 602, 23 So.2d 230. We are constrained to remark here that the length of this opinion is due to the extensiveness of the pleadings and the voluminous record attached; we are also impelled to state that the learned trial judge and able counsel for both the State and the defendant have treated the matter with dexterity and completeness.

Counsel for the defendant argues in brief that there is not one scintilla of evidence to indicate that the accused made the statement herein involved without a reasonable belief of its truth. This contention would have to do with malice, which we have covered in our discussion of Bills of Exceptions Nos. 6, 8, 9, 11 and 24.[14] Cf. State v. Bienvenu, 36 La. Ann. 378.

[fol. 226] Bill of Exceptions No. 25 is without merit.

Bill of Exceptions No. 26 was reserved when the trial court denied defendant's Motion in Arrest of Judgment.

The Motion averred "that the entire proceedings against the defendant are null and void for the reasons that the statutes under which the bill of information is laid is unconstitutional and null and void and in violation of the

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[14] It is appropriate to here observe that if defendant believed the statements he made, he could have pursued the following legal channels open to him:

(1) Legal proceedings to compel the judges to sign the orders.

(2) Charging the judges with a violation of the "Deadhead" statute, LSA-R.S. 14:138.

(3) Conducting an open hearing under the provisions of LSA-R.S. 15:17.1 concerning the alleged actions of the judges and whether or not there was a question of racketeer influences on the eight judges.

(4) Institution of removal from office proceedings under the provisions of Art. IX, Secs. 1 and 5, La. Const. of 1921.

(5) Availing himself of the services of the Judicial Council of the Supreme Court of Louisiana as provided by its Rule XX, Sec. 6. West's LSA, Vol. 8, Supplement for use during 1963.

The record reflects that defendant did not avail himself of the foregoing legal channels.

First Amendment of the United States Constitution as a restriction on the freedom of speech."

We find no merit in the instant bill. In our disposition of Bill of Exceptions No. 3, we found LSA-R.S. 14:47-50 constitutional and not violative of the First Amendment to the United States Constitution.

Bill of Exceptions No. 26 is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

Hamiter, J., concurs in the result.

[fol. 227] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

APPLICATION FOR REHEARING—
Filed June 17, 1963

The judgment of this Honorable Court rendered herein on June 4, 1963 is erroneous, and a rehearing should be granted in this case for the following reasons:

1.

This Honorable Court erred in holding that Bill of Exception No. 1, involving the Motion to Recuse Judge Ponder, is without merit. The basis of the accused's Motion to recuse is that: (1) the Honorable Jack P. F. Gremillion, Attorney General of Louisiana and prosecutor in the instant case, publicly stated in the press and elsewhere before the trial of this defamation charge that "This is an unprecedented matter (referring to the instant case). . . . There is no doubt that the integrity of our judicial system is involved." —thereby making the integrity of the Louisiana judiciary an issue in Garrison's trial, with the result that the Louisiana judiciary became an interested party in this case within the meaning of the recusation law of Louisiana, Article 303 of the Code of Crimi-

nal Procedure, R.S. 15:303; and (2) the constitutional and statutory provisions of the State of Louisiana authorizing the arbitrary appointment by the Louisiana Supreme Court of a trier of fact for a particular case are unconstitutional as violative of the Due Process Clause of the [fol. 228] Fourteenth Amendment to the United States Constitution, and the appointment of the Honorable William H. Ponder under these constitutional and statutory provisions is therefore null and void. For argument in support of this bill see pp. 17-29 of our brief.

The opinion of this Honorable Court makes no mention of the highly prejudicial remarks of the Attorney General which we relied upon in our brief in this case as the factual basis of this bill. This Court has set aside convictions because during the trial the prosecuting attorney has made an appeal to race prejudice or has commented on the failure of the accused to testify in his own behalf—remarks which have unduly prejudiced the trier of fact in the case against the accused. See *State* v. *Easley*, 118 La. 690, 43 So. 279. In the present matter the Attorney General announced during his closing argument before Judge Ponder that he had come into the case because he thought that "the integrity of the judiciary was involved". The trier of fact in the instant proceedings was himself a member of that judiciary; can it be doubted for one moment that the Attorney General's attitude toward this case influenced Judge Ponder in his decision herein finding the accused guilty? The opinion of this Honorable Court also makes no mention of our constitutional argument, on pages 18-19 of our brief in this case, that bias or prejudice on the part of the judge in a *misdemeanor* case in Louisiana is grounds for recusation. See *State* v. *Laborde*, 214 La. 644, 38 So. 2d 371. In the instant case Judge Ponder in effect admitted in his per curiam to this [fol. 229] bill that he was biased or prejudiced toward Garrison; he admitted this by saying that these emotional attitudes furnished no grounds for his recusation under the Louisiana jurisprudence. As Professor Slovenko points out in his article "Je Recuse!": The Disqualification of a Judge, 19 La. L. Rev. 644 (1959), and as this Court recognized in *State* v. *Laborde*, supra, if bias or prejudice

on the part of the Judge in a *misdemeanor* case is not grounds for recusation under Article 303 of the Code of Criminal Procedure, then that article violates Article 1, Section 9, of the Louisiana Constitution, which guarantees the accused a trial by an impartial jury.

As this Court said in *State* v. *Livaudais*, 161 La. 882, 109 So. 536, relied on in the opinion in the instant case (page 29):

> "The responsibility resting upon the trial judge, and the latitude of discretion vested in him, in a prosecution for libel is *exceptionally great.*" (Emphasis ours.)

By his attitude toward Garrison's prosecution as expressed in his public statements before the trial, and during the trial itself, the Attorney General made it impossible for any Louisiana judge to give the accused a fair trial for defamation because of his November 2 statement.

Nor did the opinion of this Honorable Court in the present matter make any reference to, or in any way distinguish, the federal cases cited on pages 24-26 of our brief in support of the argument that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the trier of fact to determine the guilt or innocence of an accused in a criminal proceeding [fol. 230] be completely without interest.

And finally, in its discussion of Bill No. 1 this Court had nothing to say in answer to our contention on pages 27-29 of our brief that the accused herein was prejudiced because his trier of fact was selected by this Honorable Court.

In finding Bill No. 1 herein to be without merit this Court has violated rights guaranteed to the accused by Article 1, Section 9, of the Louisiana Constitution and by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2.

This Honorable Court also erred in finding that our Bill of Exception No. 2 was without merit. Not only did the trial judge permit the State to refuse to specify the par-

ticular parts of the November 2 statement which were thought to be defamatory; he also allowed in evidence three other privileged statements made by the accused on this same subject, and then went on to conclude that all four statements revealed malice on the part of the accused. By assuming this attitude during the trial of this case the trial judge placed an unfair burden on the accused herein, and prevented him from receiving a fair trial.

3.

The opinion in this case is in error in holding that the accused's rights under the First Amendment to the United States Constitution have not been violated by this prosecution. The First Amendment argument made by the accused herein is grounded on the following contentions:

[fol. 231] 1. *The criminal statutes defining defamation under which the charge against Garrison has been brought, Articles 47-50 of the Louisiana Criminal Code, R.S. 14:47-50, as well as that portion of Article 1, Section 3, of the Louisiana Constitution authorizing such laws, are absolutely null and void in that they are prohibited by the First Amendment to the United States Constitution, guaranteed to citizens of the states by the Due Process Clause of the Fourteenth Amendment to that Constitution.*

A. Any law which in any fashion curtails freedom of expression violates the First Amendment to the Federal Constitution.

B. In the alternative, these statutes are phrased in such broad, general terms that they cover activity that in ordinary circumstances constitutes an exercise of freedom of speech or of the press, and for this reason Articles 47-50 are void.

C. Articles 47-50 fail to provide the procedural safeguard of a trial by jury which is essential to the protection of First Amendment rights.

2. *In the alternative it is contended that in the event Articles 47-50 defining the crime of defamation, R.S.*

14:47-50, are found not to violate the Federal Constitution, still the accused's conviction of defamation for the statements set out in the bill of information filed herein deprives him of his right to freedom of expression, guaranteed to citizens of Louisiana by the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

For argument in support of the above points, see pages 34-55 of our brief in this case.

[fol. 232] The opinion of this Honorable Court in this case simply does not even begin to answer any of the serious arguments which we made in urging the accused's First Amendment rights in the instant case, as will be obvious if pages 34 through 55 of our brief are compared with pages 19 through 25 of the opinion rendered herein on June 4, 1963. Much of the constitutional law applicable is quoted *verbatim* and several of the leading United States Supreme Court decisions are briefed at some length, but *not one* of our arguments on this issue is given any serious consideration.

In our brief in this matter we distinguished *Beauharnais* v. *Illinois*, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 1375, and showed that it is not relevant in the instant case. See Brief, p. 51. This Court's opinion does not attempt to refute our reasoning about *Beauharnais*. On the contrary, this Honorable Court's opinion contents itself, as did the trial judge, with simply stating that under *Beauharnais* criminal libel is not within the protection of the First Amendment, and that it is unnecessary in the instant case to consider the issues behind the phrase "Clear and Present Danger". *Bridges* v. *California*, *Pennekamp* v. *Florida*, *Craig* v. *Harney*, and *Wood* v. *Georgia*, under which the accused herein is clearly entitled to a reversal of his conviction, are dismissed on the ground that contempt and defamation are different crimes!* And *not one word* is said in the opinion about *seditious libel* and its historical and constitu-

* For the close similarity between the crimes of contempt and defamation see Kelly, Criminal Libel and Free Speech, 6 Kan. L. Rev. 295, 322 (1958).

[fol. 233] tional background in England and this country—which is an amazing oversight in view of the fact that the offense with which Garrison is charged herein is seditious libel, and in view of the further fact that we devoted pages 34 through 39 and pages 75 through 83 of our brief in this case to a discussion of the crime of seditious libel.

In addition to the numerous authorities dealing with the First Amendment cited and relied on in our brief in this case, we would like to add the following:

In *Bridges* v. *California*, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, it was argued that at the time the Constitution of the United States was adopted, the English common law recognized the power of a judge to punish for contempt, and that hence contempt was not protected by the First Amendment. The United States Supreme Court brushed aside this argument, saying:

> "That this historical contention is dubious has been persuasively argued elsewhere. . . . In any event it need not detain us, for to assume that English common law in this field became ours is to deny the generally accepted historical belief that 'one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press.' Schofield, Freedom of the Press in the United States, 9 Publications Amer. Sociol. Soc. 67, 76."

One of the Framers of the United States Constitution, James Madison, wrote that "the state of the press . . . under the common law, cannot . . . be the standard of its freedom in the United States." VI Writings of James Madison 1790-1802, 387. And in protesting against the federal Sedition Act Madison said:

> "The freedom of the press, under the common law, is, in the defenses of the Sedition Act, made to consist in an exemption from all previous restraint on [fol. 234] printed publications, by persons authorized to inspect or prohibit them. It appears to the committee that this idea of freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would

have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made." 4 Elliot, Debates on the Federal Constitution 569 (2d ed. 1866).

The reason there is no United States Supreme Court decision—to date—involving the constitutionality of a state criminal libel statute such as Articles 47-50 of the Louisiana Criminal Code is that prosecutions for criminal libel are practically unheard of in this country. To resort to prosecution rather than counter argument seemed ridiculous and cowardly on the frontier and throughout the United States during the nineteenth century. The individualist temper of Americans; the philosophy of *laissez faire;* the memories of the Star Chamber in the field of libel, of pre-Revolutionary abuse, and of the Sedition Act of 1798; faith in the rationality of discussion—all of these factors played a part in the almost complete disappearance in the United States of prosecutions for seditious libel —or criminal libel of any kind. See Kelly, Criminal Libel and Free Speech, 6 Kan. L. Rev. 295 (1958); Riesman, Democracy and Defamation, 42 Colum. L. Rev. 727, 734 (1942).

As an example of the foregoing, Justice Jackson of the United States Supreme Court testified before the Senate Committee which passed on his appointment to the Supreme Court that when he was Attorney General of the United States his department had an established policy of declin- [fol. 235] ing to prosecute criminal libel cases when there was open to the individual making the complaint a civil remedy, and when there had been no breach of the peace or other public injury done by the libel. Jackson told the Committee about his refusal to prosecute the columnists Pearson and Allen at the request of Senator Tydings. Pearson and Allen said that Tydings had gotten the WPA to build a road to the yacht basin on his Maryland estate, but although the F.B.I. found this charge to be inaccurate Attorney General Jackson refused to prosecute. See Riesman, op. cit. supra, p. 748.

The opinion of this Honorable Court also fails completely to discuss, or even to mention, our argument that the procedural safeguard of a trial by jury is an essential ingredient in a criminal statute which deprives a person of a First Amendment right. As the great jurist Sir Henry Maine reminds us in his work Early Law and Custom at page 389 (1883), liberty is secreted "in the interstices of procedure". On the importance of procedural safeguards in the area of First Amendment rights, see McKay, The Preference for Freedom, 34 N.Y.U.L. Rev. 1182 (1959), particularly II F. *Procedural Due Process and the First Amendment*, p. 1218. See also *Speiser* v. *Randall*, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460; Meiklejohn, The First Amendment is an Absolute, 1961 Sup. Ct. Rev. 245; Reich, Mr. Justice Black and the Living Constitution, 76 Harv. L. Rev. 673 (1963); Frantz, The First Amendment in the Balance, 71 Yale L.J. 1424 (1962).

Thomas I. Emerson, Lines Professor of Law at the Yale Law School, effectively demonstrates the unconstitutionality of a criminal libel statute such as we have in Louisiana in the April, 1963, issue of the Yale Law Journal. See [fol. 236] Toward a General Theory of the First Amendment, 72 Yale L.J. 877, esp. 922-924 (1963).

There can be no doubt that the accused's conviction in the present matter violates the First Amendment to the United States Constitution, guaranteed to him by the Fourteenth Amendment to that Constitution.

4.

This Court erred in holding that the accused was not entitled to a jury trial in the district court proceeding herein. The accused's request for a jury trial has the following bases:

1. The right to a trial by jury is essential to a fair trial.

2. Trial by jury is particularly important in cases involving the right of free speech.

For argument on these points see pp. 72-83 of our brief filed in this case.

This Court erred in holding that *Gideon* v. *Wainwright*, 372 U.S. 335, 83 S.Ct. 792, is not applicable in the instant case because a felony was involved in *Gideon* and only a misdemeanor is involved here. Nothing in the United States Supreme Court decision in *Gideon* even suggests that its holding is to be limited to felony cases. On the contrary, the decision in *Gideon* obviously includes all criminal trials. The Court also is in error in deciding that there is no comparison between the right to counsel and the right to a trial by jury—if anything, the right to trial by jury is *more important* than the right to counsel. Trial by jury is a right which dates back to Magna Carta in 1215, whereas [fol. 237] the right to be assisted by counsel is of much more recent vintage. A jury is protection against a prejudiced judge; counsel is not.

As we have already said in this Application for Rehearing, the opinion of this Honorable Court does not even try to answer our argument that a jury is a constitutional essential in a trial involving a First Amendment right. In footnote 12 of the opinion attention is called to *Green* v. *United States*, 356 U.S. 165, 78 S.Ct. 632, 2 L.Ed.2d 672, in which it was held that criminal contempt cases are not subject to jury trial as a matter of constitutional right. The reason given by the United States Supreme Court for its decision in *Green* is that there was no trial by jury in contempt cases at the time the Constitution was written. The contrary is true in seditious libel cases, as we pointed out in the brief which we filed in this case. Furthermore, we call the Court's attention to the fact that the United States Supreme Court has recently taken jurisdiction in the contempt case of Mississippi Governor Barnett and Lieutenant Governor Johnson, in which the sole issue for decision is whether these two gentlemen are entitled to a trial by jury for their contempt of a federal court of appeal's restraining order. *U.S.* v. *Barnett*, no. 1011, 31 L.W. 3340.

In being denied a trial by jury in the present proceedings the accused was deprived of rights guaranteed to him by the First, Sixth, and Fourteenth Amendments to the United States Constitution.

5.

The opinion in the instant case errs in holding that it was proper for the trial judge to admit in evidence state-
[fol. 238] ments made by the accused on November 9, 1962, and on January 11 and 12, 1963, to show malice on the part of the accused under Articles 445-446 of the Code of Criminal Procedure, R.S. 15:445-446. As we said in our brief in this case, pages 83-85, these other statements of the accused were also comments upon the conduct of the Judges in respect to public affairs, made by the accused in the reasonable belief of their truth, and therefore they also were privileged, and malice could not be inferred from these privileged statements any more than it could be inferred from the November 2 statement. The opinion in this case, on pages 35 through 37, sets out the State's Answer to the Application for a Bill of Particulars, an excerpt from the per curiam of the trial judge, and a quotation from *Kendrick* v. *Kemp*, 6 Mart. (N.S.) 500 and from Jones on Evidence. However, nothing is said in answer to our contention that the State failed in this proceeding to establish malice on the part of the accused toward the Judges by positive evidence tending to show that the accused felt hatred and ill will toward the Judges and wanted to hurt them, and that this hatred, ill will and desire to injure on his part was the motivating cause of this November 2 statement.

As we said in our brief in this case, if malice cannot be inferred from one privileged publication, how can it be inferred from three other equally privileged publications?

6.

The opinion of this Honorable Court errs in holding that the State could rely solely on the self-serving, hearsay testimony of the eight Judges in this case to show that Garrison's November 2 statement exposed these Judges [fol. 239] to hatred, contempt, or ridicule, or deprived them of the benefit of public confidence or social intercourse. See Art. 47 (1), Crim. Code, R.S. 14:47 (1).

In its opinion this Court answers our objections to this testimony by simply stating that the testimony was not

hearsay, giving neither reasons nor legal authority to support this holding. Certainly it was hearsay. Hearsay evidence is testimony a witness offers in court which is not based on his own knowledge, but is merely a repetition of what he has been told by a person not a witness in the case, and which is offered as proof of the truth of the matter he is repeating. Wharton's Criminal Evidence, v. I, pp. 571-577, sec. 249 (12th ed. 1955). Under this test, the testimony of the Judges repeating what had allegedly been said to them by various persons about their numerous vacations, and so forth, was clearly hearsay; nor does it come under one of the exceptions to the hearsay rule, such as res gestae; etc.

As we stated in our brief in this case, pages 85 through 89, the Judges' testimony on the subject of the hatred, contempt, or ridicule to which they had allegedly been subjected amounts to no evidence at all. It certainly would not have won them any damages in a civil suit for defamation!

Thus this accused has been fined $1,000 and deprived of his valuable First Amendment rights solely on the anonymous, self-serving, vague and indefinite hearsay testimony of the eight complaining witnesses. Not only was no "Clear and Present Danger" to the social order shown herein by the State, but also the State completely failed to prove that the Judges themselves had been injured in any fashion.

[fol. 240]

7.

The opinion of this Honorable Court errs in holding that the testimony of Joseph I. Giarrusso, Superintendent of the New Orleans Police Department, as to whether the accused had called upon him for more help in vice investigations, was admissible in evidence at the trial of this matter. As we argued in our brief in this case, on pages 89-90, Giarrusso's testimony had *nothing* to do with the two crucial issues in this case: *i.e.*, whether Garrison made his November 2 statement in 1) a reasonable belief of its truth, and 2) without malice. Further, the trial judge's reason for allowing Giarrusso's testimony to be given, as revealed in his per curiam to Bill No. 18, is such a striking example

of how confused he became about the issues in this case that it alone should entitle this accused to have his conviction set aside.

8.

The opinion of this Honorable Court in this case errs in upholding the trial judge's rejection of Proposition of Law No. Eleven, which recited that publications made in the discharge of a public duty under authority of law are privileged. See Burdick, Law of Crime, v. 3, p. 166, sec. 795; *Deshotel* v. *Thistlethwaite*, 240 La. 12, 121 So.2d 222.

The accused's two legal defenses to the instant prosecution were 1) his right to free speech under the First Amendment to the United States Constitution, and 2) the double privilege which he enjoyed on November 2, 1962—first, because the remarks were made about the public actions of public men, and second, because the speaker was an [fol. 241] elected public official and was speaking about the public business which he was chosen by the people to transact. Fifteen pages of our brief in this case are devoted to the defense of privilege, pages 55 to 70. In its opinion herein this Court disposed of the privilege claimed by the accused as a public official (see pages 43-46 of the opinion) on the ground that the trial judge found that the accused acted maliciously—but not a word is said by this Court in its opinion in refutation of our argument that the statement which forms the basis of this prosecution is privileged because it is a comment on the public actions of public men.

Nothing could be more striking proof of the extent to which Garrison was prejudiced in the present case by having a biased trier of fact than the way in which his legal defense of privilege was pulled right out from under him by the holding of the trial judge that the accused spoke maliciously on November 2, 1962, and thus had no privilege—a holding, as we pointed out in our brief in this case, which is not supported by one iota of evidence.

It is perfectly true that malice can be proven by the State in different ways in a defamation prosecution—by extrinsic evidence of hatred, ill-will and a desire to injure on the

part of the accused; or by intrinsic evidence within the publication itself, such as the exaggerated language, the mode and extent of the publication, and so forth. *State* v. *Lambert*, 188 La. 968, 178 So. 508. However, the State was able to put on no extrinsic evidence of personal ill-feeling against the Judges on Garrison's part at the trial of this case, nor did the trial judge hold that the language of the November 2, 1962 publication was exaggerated or that the statement itself, by its mode or extent, revealed malice on the part of the accused. And as the accused defended on the ground of privilege, malice cannot legally be *inferred* [fol. 241a] from the publication itself—but that is just what the trial judge did in this matter. See Art. 49, Code Cr. Proc., R.S. 14:49 (actual malice must be proved when the publication is privileged). Another error of law which has been made by the district court and by this Honorable Court in this case is that "reasonable belief" and "malice" in Article 49 have been merged and *lack of reasonable belief has been treated as malice*. This approach to the problem is indefensible.

In answer to our contention, made in brief and argument, that there is not one scintilla of evidence in this record to indicate that the accused made the statement here involved without a reasonable belief of its truth, this Honorable Court observes in footnote 14 in its opinion herein that if the accused believed the statements he made, he could have pursued the following legal channels open to him:

1. Taken legal proceedings to compel the judges to sign the orders.
2. Charged the judges with a violation of the "Deadhead" statute, R.S. 14:138.
3. Conducted an open hearing under the provisions of R.S. 15:17.1 concerning the alleged actions of the judges.
4. Instituted removal from office proceedings under the provisions of Article IX, Secs. 1 and 5, La. Const. 1921.
5. Availed himself of the services of the Judicial Council of the Supreme Court of Louisiana.

The answer to this line of reasoning is that:

1. There were no legal proceedings available to compel the judges to sign the orders approving expenditures from [fol. 242] the Fund. Mandamus will not lie in Louisiana to enforce a discretionary duty. *State* v. *Orleans Parish School Board*, 221 La. 243, 59 So.2d 177. However, the Honorable J. Bernard Cocke was prosecuted by the accused herein for malfeasance in office for refusing to sign an order relative to payment of investigation expenses out of the Fund, but the judge ad hoc appointed to try the case, the Honorable Lessley P. Gardiner, dismissed the prosecution because of the discretionary nature of the duty involved. See *State* v. *J. Bernard Cocke*, No. 178-590 "H" of the docket of the Criminal District Court for the Parish of Orleans.

2. Taking a great number of vacations, many of them allowed by law, is not the extreme type of behavior prohibited by the "Deadhead" statute, which forbids the receipt of compensation as a public officer when absolutely no work at all is done, or virtually none. See R.S. 14:138.

3. In November of 1962 the accused filed a petition for an open hearing under the provisions of R.S. 15:17.1, concerning various activities of the Judges, in Judge Brahney's court, Section "D" of the Criminal District Court for the Parish of Orleans. See Minute Book, Section "D", Month of November, 1962. No action was ever taken on this petition by the Judges.

4. The Judges' actions in arbitrarily and abruptly cutting off the District Attorney's funds raises interesting questions about the racketeer influences on our eight vacation-minded judges, but would hardly serve as the basis for a removal from office suit under Article IX, Sections 1 and 5, of the Louisiana Constitution. Section 1 sets out [fol. 243] the grounds for such a suit as "high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness."

5. The Judicial Council is concerned only with the smooth running of the Louisiana courts, civil and criminal. Its functions are organizational in nature. It has no jurisdiction over the actions of the judges themselves, particularly in the area of the Fines and Forfeitures Fund, and has absolutely no authority, disciplinary or otherwise, over any of the judges of this state. See Supreme Court Rules, Rule XX, Section 6, which sets out the purposes of the Judicial Council.

To adopt the reasoning used by this Honorable Court in its opinion herein, it is obvious that the accused had a reasonable belief in the truth of what he said on November 2, 1962 because he did in fact pursue all of the legal channels which were open to him.

Conclusion

For the great many reasons given above, the accused herein, Jim Garrison, respectfully requests that this Honorable Court grant a rehearing in this case and set aside the conviction and sentence herein.

Donald V. Organ, 800 Royal Street, New Orleans, Louisiana.

Louis P. Trent, 419 Carondelet Street, New Orleans, Louisiana.

Rehearing refused, June 28, 1963.

[fol. 244] Certificate of Service (omitted in printing).

[fol. 245]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR SUPERSEDEAS, STAY OF EXECUTION AND RECALL OF MANDATE

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

I.

The petition of Jim Garrison, defendant in the above numbered and titled cause, with respect represents that:

II.

This Honorable Court rendered its decision affirming petitioner's conviction and sentence on June 4, 1963, and denied petitioner's application for rehearing on June 28, 1963.

III.

Petitioner contends, *inter alia*, that the opinion and decree of this Honorable Court deprives him of rights guaranteed to him by the First and Fourteenth Amendments to the United States Constitution.

IV.

By motion to quash and by motion in arrest of judgment in the district court petitioner challenged the constitutionality of Article VII, Section 41 of the Constitution of Louisiana, and Articles 47-50 of the Louisiana Criminal Code (R.S. 14:47-50), on the ground that these provisions are repugnant to the First and Fourteenth Amendments to the United States Constitution.

V.

In its decision in this case this Honorable Court held, [fol. 246] that said provisions are valid and constitutional.

VI.

Under the provisions of Title 28, Section 1257 of the United States Code, petitioner has a right of appeal to the Supreme Court of the United States, and this right exists for a period of ninety (90) days from 1963.

VII.

Petitioner intends to appeal this case to the Supreme Court of the United States within the time allowed by law

for so doing, and petitioner is entitled to an order staying and recalling the issuance of the mandate herein, and staying and arresting the execution of the judgment herein until petitioner has had time to prepare and present his appeal and to have it acted upon, and in the event that petitioner shall timely file his notice of appeal to the Supreme Court of the United States, staying and recalling the mandate herein and staying and arresting the execution of the judgment herein, until the Supreme Court of the United States shall have made its final disposition of this case.

Donald V. Organ, Chief Counsel for Jim Garrison,
800 Royal Street, New Orleans 16, Louisiana.

Eberhard P. Deutsch, Of Counsel.

[fol. 247] *Duly sworn to by Donald V. Organ, jurat and certificate of service omitted in printing.*

[fol. 248]

IN SUPREME COURT OF LOUISIANA

No. 46,686

STATE OF LOUISIANA

versus

JIM GARRISON

ORDER FOR SUPERSEDEAS, STAY OF EXECUTION AND RECALL OF MANDATE—June 28, 1963

On consideration of the petition of Jim Garrison, defendant and appellant in the above numbered and entitled cause:

It Is Ordered that the execution and mandate and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby recalled, stayed and arrested pending and until the 26th

day of September, 1963, in order to permit Jim Garrison to appeal herein to the Supreme Court of the United States, and, in the event Jim Garrison shall timely file a notice of appeal to the Supreme Court of the United States, then it is ordered that the execution and mandate, and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed and arrested until the Supreme Court of the United States shall have made its final disposition of this case, and until the disposition of this matter shall have become final.

New Orleans, Louisiana, this 28th day of June, 1963.

E. Howard McCaleb, Jr., Associate Justice, Supreme Court of the State of Louisiana.

[fol. 249] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 11, 1963

1—Notice is hereby given that Jim Garrison, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Louisiana (entered herein on June 28, 1963) affirming the judgment of conviction.

This appeal is taken pursuant to 28 USC 1257(2).

Appellant was convicted of the crime of defamation, in violation of Section 47, Title 14, Louisiana Revised Statutes; was sentenced to pay a fine of $1,000 or to serve four months' imprisonment; and is presently enlarged on bail in the sum of $500.

2—The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said

transcript the following: The entire record and transcript of the proceedings in the District Court (excluding all exhibits) and in this Court (including this notice of appeal); and a copy of appellant's brief filed in this Court.

3—The following question is presented by this appeal:

> Whether the First and Fourteenth Amendments to the Constitution of the United States permit the State [fol. 250] of Louisiana so to apply its constitutional provision for trial of misdemeanors without a jury, and its statutory provision making criminal defamation a misdemeanor, as to convict and sentence a parish District Attorney, without trial by jury, for publication of a statement critical of the official conduct of the Judges of the parish Criminal Court, when the District Attorney's statement plainly involved no clear and present danger, either to preservation of the peace or to the proper administration of justice.

Donald V. Organ, 800 Royal Street, New Orleans.

Louis P. Trent, 419 Carondelet Street, New Orleans; Attorneys for Jim Garrison, Appellant.

Eberhard P. Deutsch, Of Counsel.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 252]

IN CRIMINAL DISTRICT COURT

PARISH OF ORLEANS, LOUISIANA

No. 177-418

Section "C"

STATE OF LOUISIANA,

vs.

JIM GARRISON.

Transcript of Trial Proceedings—January 21, 22, 23, and 24, 1963

Pursuant to Notice, the above captioned cause came on for hearing in Division "C" Criminal District Court, beginning at 10:00 o'clock a.m. on Monday, January 21, 1963,

Before: Honorable William H. Ponder, Judge.

APPEARANCES

For the Plaintiff: Honorable Jack P. F. Gremillion, Attorney General, State of Louisiana. M. E. Culligan, Sr., Esq., John E. Jackson, Jr., Esq.

For the Defendant: Donald V. Organ, Esq., Louis P. Trent, Esq.

Margie Witt—Court Reporter.

[fol. 253] PRELIMINARY MATTERS

The Court: This is the case of the State of Louisiana vs. Jim Garrison. Is the State ready?

Mr. Gremillion: Yes, your Honor.

The Court: Is the Defendant ready?

Mr. Organ: The Defendant is ready.

The Court: I want to state at the outset that my rules of Court, which I have operated under for a long number

of years, are that there will be no smoking in the courtroom, no noise in the courtroom, there will be no pictures taken in the courtroom while Court is in session. There will be no tape recordings in the courtroom, no publicity of any kind, other than the usual press reports in the proceedings of this trial.

If there are any matters that you want to see me about in the coverage of the trial, I will be available in my office to give you any information that you want. I want to extend to Counsel a fair and impartial trial in this case. I want to extend to the members of the press and news media every courtesy that is justified under the Canons of Ethics.

I believe that the State and the Defendant have arranged for the taking of the testimony by special court reporters.

Mr. Gremillion: That's correct, your Honor, the firm of Dietrich and Witt. While we both understand that a tran- [fol. 254] script is not necessary in a misdemeanor case, we felt it was desirable to have one and we have made those arrangements and we would suggest that the court reporter be sworn.

(Thereupon, Margie Witt was duly sworn by the Court to serve as Court Reporter in these proceedings.)

Mr. Organ: If the Court please, the Defendant wants to sequester all witnesses now. We understand that the State has subpoenaed a great number of newsmen and TV representatives which we are not interested in sequestering but the balance of them we want sequestered.

The Court: Will you call the names of the witnesses and see if the witnesses are here, so I will be sure they are placed under the Order.

Mr. Gremillion: If your Honor please, we have principally newspaper reporters, the Judges themselves and several other witnesses that may or may not be used. As to all of those, we assume the responsibility of their presence. We have no objection to the rule for sequestration of witnesses; however, we would like in addition to that to have the Judges exempted and the Assistant District Attorneys that they have subpoenaed.

The Court: I wouldn't feel justified in excepting to the extent of leaving them come into the courtroom during the proceedings. I think perhaps they are interested parties.

[fol. 255] Mr. Gremillion: That's what I mean. We have no objection to the Judges not being in the courtroom because many of them are holding Court today.

The Court: Go ahead and call the witnesses.

(Thereupon, the names of the witnesses were called by the clerk.)

Mr. Organ: I'd like the record to show that the witnesses are not answering for themselves and these answers are being given by the attorneys for the prosecution.

Mr. Gremillion: We made a statement, your Honor, that we would be responsible for them. One of them is a clerk in one of the divisions of the Court.

Mr. Organ: We would just like to know who is actually here. We'd like the defense witnesses called, if the Court please.

(Thereupon, the witnesses were called by the clerk.)

Mr. Organ: If your Honor please, we don't expect to need these defense witnesses and after they are called, we'd like to have them excused, if they will give defense Counsel their telephone number where we can call them and have them available in a couple of hours.

The Court: That will be satisfactory.

Mr. Organ: If the Court please, I notice that out of our first nine witnesses, there was only one answer and I ask [fol. 256] the Court to ask the clerk to determine if those subpoenas were served, so we will know if these men have been served.

The Court: One of the witnesses was not served. I had a call from an attorney this morning and he made an explanation. He will be available to the Court and I can give you that name later. One witness was personally served and has not answered. I would issue a bench warrant for his arrest and bring him to Court, if you so desire.

Mr. Organ: I'd like to know who he is.

The Court: Alex Berger. You want him attached?

Mr. Organ: Not at the moment. We may not need him.

The Court: Michael Callia, they made several trips to his home and never were able to serve him and, in addition,

telephone calls and have not been able to locate him. Frank Caracci, I believe he is in Florida at this time. Sam Saia has not been served. He is out of town and won't be back until next week.

Mr. Organ: Does your Honor have anything on Francis Giardina, the No. 1 witness? We don't want to hold up the proceedings but if they will look and let us know as the trial progresses.

The Court: Those witnesses who are in the courtroom and whose names were called will please stand. All of the [fol. 257] witnesses that have been summoned and that are now standing will go out of the courtroom. I don't believe there is a witness room for the Court to sequester you or put you under the Rule during the trial of this case, so you will just have to make yourselves available outside of the courtroom or somewhere within the building where you can be available. You will not come into the courtroom at any time while this trial is in progress. You are not to discuss this case among yourselves or allow anyone to discuss it with you until after the conclusion of the trial.

Mr. Organ: Counsel can discuss the case with the witnesses?

The Court: Yes.

Mr. Organ: I'd like the witnesses to be so instructed.

The Court: Counsel will be permitted to talk to the witnesses but no other person.

Mr. Organ: If your Honor please, it has been called to my attention that the newspaper men apparently feel that they are separated too by your Honor's ruling. I don't think that was the intent.

The Court: You want to exclude the newspaper men from the room?

Mr. Gremillion: They can be excluded from sequestration and can attend all sessions of the Court—all news [fol. 258] media, including TV reporters also.

The Court: Will you announce that newspaper reporters or TV reporters or other news media, that they may be permitted in the Court. I want to explain to members of the press and other news media that there was no exception made as to our rule of sequestering witnesses until after

you had retired. Both sides in this case have consented that all newspaper reporters and other news media are exempt and are excepted from the rule that all witnesses be out of the courtroom.

I have no way of knowing when witnesses come in or do not come in. I hope that you gentlemen will instruct your witnesses that are not here that they will be placed under the Rule. Are you gentlemen ready to proceed?

Mr. Gremillion: Yes, your Honor. Call Mr. Bert Hyde.

Bert Hyde, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Give us your name, please.

A. Bert Hyde.

Q. Mr. Hyde, what is your occupation?

A. Reporter, New Orleans States-Item.

[fol. 259] Q. How long have you been a reporter?

A. About twenty, thirty years.

Q. Do you know the Defendant in this case, Mr. Jim Garrison?

A. Yes, I do.

Q. Would you point him out if he is in the courtroom?

A. This is Mr. Garrison here (indicating).

Q. How long have you known Mr. Garrison?

A. Oh, at least four or five years or longer.

Q. Did you have occasion to report an interview with Mr. Garrison in his office concerning the Criminal Court Judges on Friday, November 2, 1962?

A. Yes, sir.

Q. Would you tell the Court the circumstances of that interview and who was present?

A. I had been assigned by my City Editor to come out with a photographer to get the pictures and to identify the Judges who were attending an en banc session down at

Judge Platt's court. We got here, I think about nine o'clock. My City Editor also told us that if we got an opportunity, to go in and see Mr. Garrison and ask him if he had any statement to make regarding a statement which had appeared that morning in the Times-Picayune by Judge O'Hara, who had previously been a Judge.

[fol. 260] Q. Excuse me, were you sworn in?

A. Yes.

Q. Go ahead.

A. We got pictures and I watched and as soon as Mr. Garrison's office secretary came in, I told her that I would like to see the District Attorney when he got in and if she got a chance, to get me in. As we were taking pictures of the Judges going into Judge Platt's chambers, Mr. Garrison walked up the stairway—the front stairway with Mr. Geryais. When I saw him, I ran down and told him the first opportunity that he had, I wanted to come in and talk to him and see if he had a statement to make and also, that if he would just stand still a minute, I wanted to get my photographer to take his picture. So he waited and I got Ralph Uribe, who was the photographer with me and we went down and got Mr. Garrison's picture and he said just as soon as he was able, that he would see us. I came back and came into the courtroom where the Judges were meeting and I had also been instructed to assist Jack Dempsey, who was the regular reporter on the run. We waited until I think the Judges went into closed session and then when they opened up we went in and they were making a statement. I suggested then to Dempsey that he handle that phase of it—just go ahead and handle it all the way through—and I would go down and see Mr. Garrison. I went down [fol. 261] and we were there only just a few minutes when he did let us in.

Q. Who was present with him?

A. I forgot. I think Art Roane, Times-Picayune reporter, came behind me or about the same time and shortly after—he wasn't there at the beginning but Jack Dempsey came in. There was Mr. Garrison and I remember Pefshing Gervais, his special investigator, was there and a number of his assistants—men that I recognized to be his assistants

—they were there. They were not there during the entire time that he made his statement but they were in and out.

Q. Was Mr. Shea one of his assistants?

Mr. Organ: I am going to object to the leading question. Mr. Shea hasn't been brought into this testimony so far.

A. It would be a little difficult—

Mr. Organ: I urge my objection and ask for a ruling.

The Court: The objection is sustained. Don't lead your witness.

Q. Do you recall the names of any of the assistants there were in the room?

A. I think Mr. Dalton and Mr. Klein, I think. I didn't pay too much attention to it. I wasn't particularly interested.

Q. Where was this?

[fol. 262] A. This was in Garrison's office.

Q. Here in this building?

A. Criminal Courts Building, this floor, on the end.

Q. Did Mr. Garrison at that time give you a statement?

A. Yes. I told him that my office had sent me out and we were wondering if he would have some statement in answer to Judge O'Hara's statement. I think I told him that the Judges had just met and I had just come from there. I didn't know what they had actually done and he said, "Sit down and I will give you a statement."

Q. Did he proceed to give you a statement?

A. Yes, sir, he did.

Q. Did you report that statement?

A. I did, sir.

Q. In its entirety?

A. Yes, sir.

Q. And how did you report that statement?

A. Well, Mr. Garrison began making the statement and I was taking it in longhand and once or twice I told him that he should slow down a bit; that he was going too fast; that I wanted every word, and he did.

Q. And you reported every word that he said?

A. I took down every word. I specifically pointed out, I [fol. 263] think once to Mr. Garrison that I wanted to be sure that I had every word correct because I was afraid he

might write another letter on me and I kidded him a little at that time about the letter which he wrote to the editor of the paper following a coverage that I had made, I think of his original statement as District Attorney before the Chamber of—no, it was the Kiwanis Club or Rotary Club, one of them.

Q. Did he cooperate with you in that respect?

A. He definitely did.

Q. Did you check with him from time to time as he made that statement, asking whether he wanted you to say it or wanted you to report that?

Mr. Organ: I object, if your Honor please. That's grossly leading.

A. He said that he wanted to cooperate.

The Court: I think you have a right to show whether or not he checked from time to time. Ask him as to the statement. I don't think you are permitted to go into anything that he subsequently said.

Mr. Gremillion: All I am asking is exactly what your Honor said. In other words, did you check with him from time to time as to the accuracy of the statement?

Mr. Organ: I submit that is grossly leading, if the Court please.

The Court: I don't think it's leading.

[fol. 264] A. Well, on two or more occasions as we proceeded, we slowed him down and I think on at least two or three occasions I was writing faster than Mr. Roane and Mr. Roane asked him what was that statement, how did it end, and Mr. Garrison asked that I read it back and I read it back and Roane took the statement from the statement that I read.

Q. What did you do with that statement after you took it?

A. It was pretty close to twelve o'clock and I went down and called my office and told them that he had made a statement that was very lengthy and they put Mr. Kelso—Bob Kelso—on the phone and asked me to tell him briefly, as quickly as I could, for our home edition, which goes to bed about twelve o'clock—if I would give him something of

what he said and Kelso got on and I said he said so much that I would, rather than trying to give it to them over the telephone, that I would start putting it on the teletype machine in takes and they could take the story from that which I would have on the machine before twelve o'clock. I think I started about twenty minutes or fifteen minutes to twelve.

Q. Did you put the whole statement on the teletype to your paper?

A. I put it in its entirety, yes, sir.

Q. Did you check the statement that you sent with the one that was published in the paper?

[fol. 265] A. I checked the one that I put on the machine from my own notes. I tore it off the machine. It was quite a lengthy piece of paper because I would take a little bit and then leave a space so they could tear it off any time they wanted. I checked that back against my notes and I put the notes in my pocket. I kept the notes for several days in a desk drawer I had down at the office. To check what came out in the newspaper against it, no, I didn't.

Q. Did you check or did you keep the teletype that you sent from this courthouse to the paper?

A. It was downstairs in the press room. I didn't specifically set it aside, no. As a usual thing, we sent it and then the Times-Picayune or the States reporter later comes and it's folded up and put on the spike.

Q. Did you subsequently secure this teletype?

A. No, sir, I didn't.

Q. Have you checked the statement published in the States-Item on November 2, as compared to the one made by Mr. Garrison in his office, to make a comparison?

A. Other than I read it and I was sure of the accuracy, because I had taken it word by word off of my notes and put it on the machine. I didn't check it against my copy, no, sir.

Q. Are you satisfied that the statement published in the States-Item is the same made to you by Mr. Garrison here?

[fol. 266] Mr. Organ: I object to this, if the Court please. That calls for an opinion of the witness. The witness has already testified as to what he did. Whether he is satisfied or not is not relevant to the issues in this case.

The Court: It is not a matter of opinion, Mr. Organ. It's a matter of many statements—what transpired and what didn't transpire.

Mr. Organ: He is asking, if your Honor please, whether he is satisfied or not. Whether he is satisfied is not a fact as to the issue in this case.

The Court: Rephrase the question, Mr. Gremillion.

Q. Is the copy of the article published in the States-Item a report of Mr. Garrison told you in his office?

A. Yes, sir.

Q. I show you, Mr. Hyde, the paper of November 2, article on the left-hand side, which states, "Text of Garrison Stand on the Judges." Is that the article that you wrote?

A. Yes, sir.

Mr. Gremillion: In connection with the witness' testimony, I would like to mark this as "State Exhibit No. 1" and, if your Honor please, would the Court permit us to just cut this out and keep the record from being too bulky?

The Court: I will suggest that in cutting it out you show [fol. 267] the date and the name of the paper.

Thereupon, the article presented was marked "State, Exhibit No. 1" for identification and filed in evidence.

Q. Now, Mr. Hyde, have you see Mr. Garrison since that article was published in the paper?

A. Yes, sir.

Q. Did he ever complain to you that it was inaccurate?

A. No, sir.

Mr. Gremillion: We tender the witness.

Cross examination.

By Mr. Organ:

Q. Mr. Hyde, in the first portion of this statement or this article that you wrote in the States, which has been introduced in evidence, appears these words which are not in quotes, and I will quote the portion which prefaces this statement: "The statement by District Attorney Jim Garrison on his feud with the Criminal District Judges fol-

lows:" Mr. Garrison did not give you the word "feud," did he?

A. No, sir.

Q. In other words, that's what you put in?

A. No, sir, I didn't put that. I put the statement on the paper—the statement that appeared in quotes. I put [fol. 268] that on the machine. Any words that precedes it or the heading is done by the office in the editing of it.

Q. In other words, the word "feud" was used by someone in the States-Item office, is that correct?

A. That's correct.

Q. Now, you don't know what assistants were in Mr. Garrison's office at any particular time that the statement was being made?

A. I didn't actually—I didn't pay too much of attention because many times when you go to see someone in his office, there will be someone coming in and out. I honestly couldn't pick them out to say who was there. They were coming in and going out and I was having a pretty good job of my own keeping up with what he was saying and trying to get it down. I was taking it in longhand and I was watching my notes and my paper.

Q. It is absolutely fair to state, is it not, that Mr. Garrison sought you out to give you this statement?

A. No, sir, he didn't.

Q. You sought him out?

A. Yes, sir.

Q. And you sought him out on instructions from your superior?

A. I did.

Q. And you sought him out on instructions from your [fol. 268a] superiors and they told you to find out what the District Attorney had to say with respect to a previous statement which Judge William O'Hara, retired, had made?

A. That's right.

Q. To ask him if he had a statement?

A. Any time a statement appears by one person, having reference to the other, we try to get contact with that person and have the answer come out in the same edition and sometimes we don't because of the way the editions fall.

Q. You actually asked him to give you a reply to Judge William O'Hara's statement?

A. Yes, sir.

Q. And you sought him out in his office where he conducts his official duties?

A. I did, yes, sir.

Q. Now, have you interviewed Mr. Garrison frequently?

A. Yes, sir.

Q. Does he frequently have a prepared text or handwritten text?

A. I don't remember him ever having had one—maybe one time but usually it's just off the cuff, as it were.

Q. In other words, your testimony is he doesn't normally have a prepared text when he makes a press release?

A. He has never given me one, no, sir.

[fol. 269] Q. He has never given you a prepared text?

A. I won't say never. I said that I think I might have gotten one press release from him that may have been a handout, as we call them—one that had previously been prepared. I don't usually cover or haven't covered Mr. Garrison's office that much. As I say, Mr. Dempsey is out here as the regular reporter and that day that I was out here, I was here to assist him because the office knew that he was going to be well tied up with this en banc session of the Court and in the police room.

Q. Did he have a prepared text in front of him?

A. No, sir, he didn't.

Q. Did he have prepared notes in front of him from which he read?

A. No, sir. He was doodling on a piece of paper and he was looking at something but it wasn't a statement, no, sir. There wasn't—I don't think there was anything much on his desk; he keeps a very orderly desk. I didn't see anything.

Q. Now, at the time, what was Mr. Garrison's demeanor? Was he in a state of anger or coolness or calmness?

A. No, sir, he appeared to be very calm to me.

Q. At any time during the course of your taking that statement, did he highlight any particular portion of it?

[fol. 270] A. No, sir, I wouldn't say that he highlighted any of it, no, sir.

Q. Isn't it a fact that Mr. Garrison made no special attempt whatever to see that the statement was published, as far as you have any knowledge?

A. No, sir, not as far as my knowledge, nothing.

Q. He didn't ask you later on, "Well, did you give my statement to the paper?" or anything like that?

A. No, sir.

Q. And he didn't at any time say to you, "Make sure you get this printed in the States," did he?

A. No, sir.

Q. Did he say anything at that time which indicated that he was in any way trying to cause any harm to any of the Judges of the Criminal District Court?

A. No, sir, he didn't say anything that he was trying to harm anybody.

Q. How frequently do you cover the Criminal Courts Building at Tulane and Broad Street?

A. I was regularly assigned here some years ago and now when I come out it's usually some special occasion. Perhaps when the regular man on the run gets tied up with too many things—you see, this particular run covers all the courts, the District Attorney's office, the Police [fol. 271] Department, the Fire Department, the Criminal Sheriff's office—it's quite a run and when there is anything really breaking, as we supposed that it would be that morning because of the en banc session of the Judges, they had sent me out early to assist Jack.

Q. How long ago was it that you regularly covered this beat?

A. From '45 or '46 through '49, about five years I would say, permanently assigned as police reporter.

Q. You have not covered it regularly since that time?

A. Yes, when I first came back here in '56—I left the paper for a few years—when I came back in 1956, at that time Mr. Dempsey was coming in at five o'clock in the morning and he would go home at twelve o'clock and I would come at twelve o'clock and stay until two-thirty, my ordinary hours being later than his.

Q. During the course of that period of time, did you have occasion to go in and out of the various courtrooms to see what trials were in progress?

A. Yes, sir.

Q. Did you cover the Judges, so to speak?

A. Yes, sir.

Q. Did you ever have occasion to cover specifically Section "E"?

[fol. 272] A. Yes, sir.

Q. Who was presiding Judge?

A. Bernard J. Cocke.

Q. Is he still presiding Judge in that section?

A. Yes, sir.

Q. Now, do you recall any time covering any proceeding—an open court proceeding in Section "E" on a Friday?

Mr. Gremillion: I object to this. This is going far beyond the scope of the witness' direct testimony and it's irrelevant and immaterial.

Mr. Organ: This witness has been placed on the stand by the prosecution. He can be examined on the entire case and not just on the direct examination.

The Court: I think he is correct on that.

A. To specifically say that I covered one in his courtroom on a Friday would be like saying that I had covered one on Monday or a Wednesday. I think I would be unfair in saying that because days actually meant nothing. You covered them when the trial was breaking and don't cover every trial. You cover those which the newspaper feels it wants broader coverage on. I couldn't honestly say.

Q. You don't recall?

A. No, sir.

Q. Do you recall who the presiding Judge was in Section [fol. 273] "B" at that time?

A. Judge O'Hara.

Q. Isn't it Judge Platt?

A. Yes, I think it is, I'm sorry.

Q. The one next to the elevators?

A. Yes.

Q. Can you tell us whether you recall covering any trials in Section "B" under the presiding authority of Judge George Platt?

A. Not too many, sir. I think, to be very honest, I think I have covered trials in his court, yes, sir, in which he presided.

Q. Do you specifically remember any?

A. No, I don't. I have covered trials on which he was sitting on the Bench.

Q. Now, around 1956, I believe you said you were covering this regularly out here. How long did that period last, approximately?

A. At least three years.

Q. Three years?

A. Yes, sir.

Q. Did you come out here every day?

A. Every day but I was more particularly interested in covering the police end of the run, rather than the trials, because if there was a trial going on, sometimes they would [fol. 274] call me in from Jefferson and I would be assigned completely to the trial or Mr. Dempsey would be covering the trial and I would be replacing him downstairs in the press room to watch the police room.

Q. Would you be in a position to state whether or not it's very frequent for court in any given section to be terminated by noon and there is no further proceeding for the entire afternoon?

A. I don't think I exactly understood that.

Q. Well, wasn't it quite frequent that you would come into a courtroom from Monday through Friday after twelve o'clock or after one o'clock or in the afternoon and find no proceedings whatever; that all business had been terminated before noon?

A. That has happened lots of times, yes, sir.

Q. Many times?

A. Many times, yes, sir.

Mr. Organ: I have no further questions.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Hyde, did you tell Mr. Garrison that you had come there to take a statement from him concerning this matter?

A. No, sir. I told Mr. Garrison that my office had sent me out and perhaps he had an answer to Judge O'Hara's [fol. 275] statement.

Q. Did he voluntarily give you this statement?

A. Yes, sir.

Q. Did he at any time tell you that this was off the record or that he didn't want to be quoted?

A. No, sir.

Q. Was his statement to you deliberate and free?

A. Yes, sir.

Mr. Organ: If the Court please, I am going to object and move that the answer be stricken because it was made while I was trying to object.

The Court: I think you went into the question of whether Mr. Garrison was calm and whether or not Mr. Garrison had said he wanted it to be published or didn't want it to be published.

Mr. Organ: The point I want to make is that the question is grossly misleading—whether it was deliberate or free is a question of this man's opinion. He didn't ask him whether he was calm. He asked him whether it was deliberate and free.

Mr. Gremillion: I just asked him if he gave that report deliberate and free, that's all.

The Court: He has already testified to that.

Mr. Organ: I move his answer be stricken, if the Court please.

[fol. 276] The Court: The objection came too late. The question was asked and answered without objection and I sustain from the time the objection was made.

Mr. Organ: To which ruling of the Court, the Defendant respectfully reserves a bill of exception and asks to be included in this bill of exception the question, the objection, the ruling of the Court, the answer, the reasons for the ob-

jection, the bill of information, all of the testimony and the entire record.

The Court: To which bill of exception the Court makes this statement at this time for the purposes of the record: That the questions that were asked and the answers that were given prior to the time that the objection was made have become a part of the record without objection. The Court has sustained any statements made after the objection has been made. It will be more fully covered in the per curiam of the Court. I suggest that you start numbering your bills of exception because the Court will have no way of knowing. I believe you have four on preliminary motions and perhaps you should make this Bill of Exception No. 5. The Court puts in this statement that this line of questioning arose by reason of the fact that Counsel for the Defendant went into the question of how the statement was made and the State has a right to examine him at this time for the purpose of clarifying the conditions at that [fol. 277] time more fully than raised by Counsel for the Defendant.

Mr. Gremillion: We have no further questions, if the Court please.

(Witness excused.)

DONALD WHARTON COLEMAN, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Would you state your name, please, sir?
A. My name is Donald Wharton Coleman.
Q. Where do you live, Mr. Coleman?
A. 301 Friedrichs Avenue in Metairie.
Q. What is your occupation?
A. Vice-President and Circulation Director of the Times-Picayune New Orleans States-Item.
Q. How long have you occupied that position?
A. For the last twenty-six years.

Q. Now, the New Orleans States-Item is published in the City of New Orleans?

A. Yes, sir.

Q. Did you have occasion to review the records, at my request, of the publication and circulation of the home and final editions of the New Orleans States-Item of November 2, 1962?

[fol. 278] A. Yes, sir.

Q. And what did your inspection reveal?

A. My inspection revealed that on November 2 we printed gross, final edition of the New Orleans States-Item, 44,587 and the approximate net sales of those 44,587 was 41,202 in the City of New Orleans and we re-printed 35,490 for the City of New Orleans. We printed 35,490 and we had 2,084 returns or net sale of 33,406.

Q. Mr. Coleman, I show you "Exhibit No. 1" and ask you if you can identify this as a part of your final edition of the States-Item which was published on November 2, 1962 and as to which facts you just testified relating to this particular edition?

A. Yes, sir, I do.

Mr. Gremillion: We tender the witness.

Mr. Organ: We have no questions, if the Court please.

(Witness excused.)

Mr. Gremillion: We have one witness we should be calling now but he had a death in his family last night, Mr. Walter Cowan, by whom we intended to prove that the statement as reported by Mr. Hyde or the quotes of Mr. Garrison was not changed or was printed as given to him, and we'd like to ask permission to call him whenever he is available this afternoon, unless you want to admit that, Mr. Organ.

[fol. 279] Mr. Organ: Admit what?

Mr. Gremillion: Admit that he would testify to that; stipulate as to his testimony. That's all we are calling him for, to testify that what was printed was given to them by Mr. Hyde.

Mr. Organ: We will stipulate that.

Mr. Gremillion: Does the Court wish to dictate it or you want me to?

The Court: Go ahead.

Mr. Gremillion: It is stipulated between the State and the Defense, that Mr. Walter Cowan, City Editor of the States-Item, would testify that he received over the teletype the report of the quotations of the statements made by Mr. Garrison on Friday, November 2, 1962, and that they were published without any re-writes and were the same and identical report given to them by Mr. Hyde of Mr. Garrison's statement. Is that satisfactory?

Mr. Organ: I think it should be made clear that the statement is the portion of the printed statement which is in quotes and it does not include the preface to it, nor does it include the portions of it which are obviously comments on enclosures—comments by the editor.

(Discussion off the record.)

STIPULATION RE TESTIMONY OF WALTER COWAN

The Court: It is stipulated by Counsel for the State and Counsel for the Defendant, that that portion of the [fol. 280] article published in the States-Item of November 2, 1962, copy of which has been filed in evidence here, that that portion of the statement that is in quotations was taken from the teletype by Mr. Walter Cowan without any change and the portion being in the record in quotations was the statement by Mr. Garrison and was published in this edition of the paper. I believe that's what you wanted?

Mr. Gremillion: Yes, sir.

ARTHUR ROANE, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name, please?

A. Arthur Roane.

Q. Have you been sworn?

A. Yes, I have.
Q. Where do you live?
A. 1025 St. Peter Street, New Orleans.
Q. What is your occupation?
A. I am a newspaper reporter.
Q. Where are you assigned as a newspaper reporter?
A. To this building, Criminal Courts Building.
Q. Who are you employed by?
A. Times-Picayune.
[fol. 281] Q. Were you present in the District Attorney's office—Mr. Garrison's office—on the morning of November 2, 1962?
A. Yes, I was.
Q. Do you know Mr. Garrison?
A. Yes, I do.
Q. Is he present in Court?
A. Yes, he is.
Q. Would you point him out?
A. He is right here, wearing the striped tie.
Q. Did you report anything that Mr. Garrison said as a result of your presence there that morning?
A. Yes, I did.
Q. Were you there for the entire period of the interview?
A. Yes, I was.
Q. Who did you see there besides yourself?
A. I remember Mr. Gervais was there and several other of Mr. Garrison's assistants were there but I can't remember which ones. They came in and they left.
Q. Did you see any other newspaper reporters there?
A. Yes.
Q. Who?
A. Mr. Bert Hyde.
[fol. 282] Q. Anyone else—any other reporters?
A. No.
Q. Did Mr. Garrison make a statement to you then?
A. Yes, he did.
Q. How did you make notes of it?
A. In longhand.
Q. Did you tell him anything of your reasons for being present?

Mr. Organ: I object.

Mr. Gremillion: Strike that.

Q. What was your reason for being present?

A. I wanted to ask him if he had any comment about William O'Hara's statement that appeared in the paper that morning.

Q. Was this in connection with your duties as a reporter?

A. Yes.

Q. Did you tell him that you were a reporter for the Times-Picayune?

A. No, he knew it.

Q. At any time during the period that Mr. Garrison made his statement, did he say any of it was off the record or he didn't want to be quoted on any portion of it?

A. Not that I can recall.

Q. Have you read the article that appeared in the States-[fol. 283] Item that has been introduced in evidence as "State Exhibit No. 1"?

A. Are you referring to the quoted part?

Q. Yes.

A. Could I see it?

Q. Yes (presenting to witness). Is that the statement you heard Mr. Garrison make at that time?

A. Yes, it is.

Q. Did you make a report of this statement to your paper?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: Excuse me. If the Court please, we are going to object to that. The bill of information in this case charges the defamation resulting from the publication in the New Orleans States. Now, this reporter testified that his paper is the Times-Picayune. He is not charged with defamation as a result of publication in the Times-Picayune. That statement is irrelevant and immaterial that he reported to the Times-Picayune.

The Court: What is the purpose of this question?

Mr. Gremillion: The purpose of the question is to show that the statement was made to several people and was not only published in this particular paper charged in the bill of information. It was published in other papers, the

report was made of it to other papers and the purpose of this is to show notoriety, show circulation and to show part [fol. 284] of the malice system and intent.

Mr. Organ: If the Court please, if that's what they want to show, it should be in the bill of information that this was published in the Times-Picayune. There is nothing in the bill of information; that is strictly on the New Orleans States.

Mr. Gremillion: We recite and charge malice in the bill of information.

The Court: I think you have a right to show the malice which has been recited and that alone.

Mr. Gremillion: I want to ask him if it was published in his paper.

Mr. Organ: I'd like to make my bill of exceptions. The Court has ruled and I'd like to follow with my bill.

The Court: Let me put the reason for my ruling in the record. The Court rules that solely for the purpose of showing malice, this evidence will be admissible and is restricted to the question of showing malice. There has been raised in the preliminary motion filed herein the question of a qualified privilege by the Defendant and if the Court finds that it was in fact a question of law; that there is a qualified privilege, then the burden of proof would shift to the Plaintiff—to the State—to show malice—actual malice, regardless of the truth or falsity of the statement. So for that reason, the evidence is admitted solely for the pur- [fol. 285] pose of showing malice. Now, you may answer the question and you may reserve your bill.

Mr. Gremillion: I also want to show that the bill of information recited, " * * * and did publish and express in the public press of the City of New Orleans," so we have charged that in the bill of information. I want to call that to the Court's attention.

Mr. Organ: May I reserve my bill without any further proceedings?

The Court: The question and answer will go in the record, you understand that?

Mr. Organ: We appreciate that but we would like to reserve our bill in response to your Honor's ruling.

The Court: That will be Bill of Exception No. 6.

Mr. Organ: To the ruling of his Honor on the question which is pending, we would respectfully reserve Bill of Exception No. 6. Included in this Bill of Exception is the question, our objection, the ruling of the Court, the testimony in the case, the record and the bill of information. The statement by Counsel of the objection is based upon the fact that criminal defamation is not a crime of intent and that evidence of similar acts are only admissible in cases where intent is part of the crime.

The Court: Off the record.

Mr. Organ: I am trying to make clear our position on [fol. 286] this, if the Court please. It may come up again during the course of the trial. Intent is not, in our opinion, a part of the crime of criminal malice—I mean criminal defamation—and only where intent is a part of the crime are acts of similar nature admissible in evidence. Also, one of the defenses which is raised, as your Honor pointed out, is a qualified privilege. We believe that the bill of information shows that this is a comment on people in public affairs, a reasonable comment based on reasonable belief and, therefore, since this statement is a qualified privilege, there is a presumption that there is no malice contained therein and we rely on *State vs. Alexander*, 216 La. 932, 45 So. 2d, 83.

The Court: Let me see that bill of information. The objection made by Counsel for the Defendant is urged on the question of intent and the Court has restricted the question to the question of showing malice and therefore the question of intent does not enter into the consideration of this evidence at this time. Further, the bill of information contains an allegation that these articles or statements were published and expressed in the public press in the City of New Orleans, to persons other than those defamed. The Court will set forth more fully its legal reasons for this ruling on these bills of exception in its per curiam, which will be attached to and made part of the bill of exceptions.

[fol. 287] Q. I believe you testified that this was the same statement that was made in your presence and to you?

A. Yes.

Q. I asked you did you report this statement to your paper?

A. Not in its entirety.

Q. But you did report portions of this statement to your paper?

A. Yes.

Q. Did you report this—I am quoting from "Exhibit No. 1" which you have already seen.

> "This raises interesting questions about the racketeer influences on our eight vacation minded judges. This is a matter regarding which I will have much more to say a little later."

Did Mr. Garrison make that statement to you and did you report it?

Mr. Organ: If the Court please, I object to that, for several grounds. No. 1, on the grounds that it's taking a portion of that statement out of context and the entire statement is not being reported to the persons to whom he transmitted it and, therefore, since it was taken out of context, the meaning of that statement, taken out of context, has no relationship to the crime alleged.

[fol. 288] The Court: I think you have to go into the full statement, Mr. Gremillion, as to whether or not that statement was made in his presence.

Mr. Gremillion: I just asked him but I will ask him again.

Q. Was this statement reported in the States-Item that was made to you by Mr. Garrison on November 2, 1962?

A. The question you just read?

Q. You previously identified this article was a statement that Mr. Garrison made, is that correct?

A. Yes.

Q. Now, the paragraph that I just read, was that a part of the statement that he made?

A. Yes, it was.

Q. Did you report that and was that published in your paper?

A. Yes.

Mr. Organ: If the Court please, I object to that. Again, the answer was given before I could object. I object to that on the grounds that the last question did not state specifically what the Attorney General meant—whether he is talking about the entire statement or just the portion which he quoted.

The Court: I think it would be better, gentlemen, if you have him identify the quoted part of the statement and [fol. 289] say whether or not that was made.

Mr. Gremillion: I'd be very glad to do that, your Honor. I thought I had already done that several times. Right here, "This raises interesting questions about the racketeer influences"—

Mr. Organ: If the Court please, we re-urge our objection. We thought our objection was sustained. We re-urge our objection to going into specific portions of this unless the entire statement was reported to the people he is talking about.

Mr. Gremillion: He has already identified it.

The Court: Let's go off the record.

(Discussion off the record.)

Q. Look at the statement, "Exhibit 1," which I just showed you a minute ago. Does that contain the statements that Mr. Garrison made to you in his office on November 2, 1962?

A. Yes, sir, it does.

Q. Have you interviewed Mr. Garrison on occasions after November 2, 1962?

Mr. Organ: I object to that, if the Court please, on the grounds that it's irrelevant and immaterial and on the grounds that it's a leading question.

The Court: Objection overruled.

A. Yes, I have interviewed him many times since then. [fol. 290] Q. Do you recall having interviewed him on November 9, 1962 or thereabouts?

A. It's quite possible. I don't remember that particular date. I see him very frequently.

Mr. Gremillion: For the purpose of refreshing the witness' memory, I'd like to show him an article which appeared in the Times-Picayune, which we are going to prove that he wrote.

Mr. Organ: If your Honor please, I am going to object to that on the ground, No. 1, it's—

Mr. Gremillion: I haven't had an opportunity of showing him what it is. I don't know how you can object to it.

(Discussion off the record.)

The Court: You present your document, you make your objection and I will make a ruling.

A. (Examining document presented.) Yes, I wrote this story.

Q. Do you recall where that information was given to you?

A. Well, it wasn't all given to me. I had to cover it and get it from various places in the building.

Q. Did Mr. Garrison make this statement to you?

Mr. Organ: If your Honor please, I object to that. He [fol. 291] hasn't testified Mr. Garrison made that statement to him. He said he wrote that story, that's all.

The Court: Ask him if he made the statement.

Q. Did he make a statement to you on November 9?

A. I suppose he did. He makes statements to me very often.

Q. Did he make a statement to you that he threatened to take racketeering influences of the Judges to the Grand Jury?

Mr. Organ: If your Honor please, I object to that as grossly leading. The witness has not said in any way that Garrison made the statement that's contained in there.

The Court: Mr. Gremillion, ask him what Mr. Garrison's statement was instead of trying to tell him.

Q. What was Mr. Garrison's statement to you?

A. You are referring to this particular question there?

Q. The article that you just refreshed your memory on.

Mr. Organ: Now, if the Court please, this is something that took place subsequent to the alleged defamation. We re-urge our objection to that for any purpose whatever. It's not relevant and not material, what Mr. Garrison may have said after the portion that was quoted in the November 2, 1962 statement. It has nothing to do with the case— [fol. 292] malice or for any other purpose. We object to going into subsequent statements at any other time, other than what was charged.

The Court: The objection is overruled. The statement is admitted for the purpose of showing malice and Courts have held that statements made even after the time are admissible if they are connected with it.

Mr. Organ: To which ruling we respectfully reserve Bill of Exception No. 7 and we ask—

The Court: Off the record.

(Discussion off the record.)

Mr. Organ: We will make this Bill of Exception No. 8 and ask to be included in that bill the question, the objection, the answer, the Court's ruling, our reasons for the objection to it, all of the testimony of the case, the bill of information and the entire record.

Q. Did Mr. Garrison make that statement to you?

A. Yes. I don't know if it was on the particular date preceding this paper but he has said that to me.

Q. Were you present on a program known as "The Working Press" on January 19, 1963, which was conducted over TV Station WYES?

A. Yes.

Q. Was Mr. Garrison on that program?

A. Yes, he was.

[fol. 293] Q. In what capacity was he on that program?

A. As the District Attorney. He was the man being interviewed.

Q. What was your capacity on the program?

A. I was one of the people interviewing him.

Q. Who else was on the program besides yourself?

A. The moderator was Charles Brennan and the other man questioning Mr. Garrison was Henry Tellus of WWL-TV.

Q. Did you talk to Mr. Garrison about this case?

A. Yes, I asked him one or two questions about it.

Q. What were the questions you asked him and what was his reply?

Mr. Organ: If your Honor please, we would like to make our objection and bill of exception general without the necessity of repetition, to all these statements that are supposedly made after the one of November 2, in order that we will not have to keep repeating our bill of exception and ask that it apply to all of the evidence of this witness in that respect.

The Court: All right.

Mr. Organ: We also wish to point out that the date mentioned about which he is being interrogated now was after this charge was filed—was long after this charge was filed—January 19 or whatever it was, just a few days ago.

The Court: Let the objection and ruling of the Court be [fol. 294] made general to all of this line of questioning to these statements made by Mr. Garrison to the various parties at different times after the original statement of November 2, 1962 and the Court enforces—sustains its same ruling that it is now for the sole purpose of showing malice and restricted to that.

Mr. Organ: I ask that our bill of exception be made general and apply to all of this testimony.

The Court: You reserved your bill to all of the general questions.

Q. Mr. Roane, tell us what you asked him and what he told you.

A. I can't remember the exact words. I can give you the substance.

Q. Give us the substance.

Mr. Organ: I am going to object to this, if the Court please. This is a criminal trial. This man is on trial here for his freedom and if the witness can't remember what was said verbatim, it has no place in this record. The substance of it is his impression.

The Court: Did you have a record?

Mr. Gremillion: No tape was kept of this, your Honor. Maybe I can clear this up.

Q. Did you ask him this question: "Jim, if you had to do this again, would you do it all over the same way?" [fol. 295] Did you ask him that question?

Mr. Organ: I object to the leading question, if the Court please. The question is grossly leading.

The Court: Mr. Gremillion, if you don't have any account of it, if he can't remember the conversation, I don't think, unless the whole conversation was kept?

Mr. Gremillion: If your Honor please, let me see if I can refresh his memory.

Q. Did you ask him that question?

A. I can't give you the exact words that I asked him and the exact words that he answered to me.

Q. What did he tell you in reply to your question?

Mr. Organ: The witness has already testified he can't give the exact words and we do object to the Attorney General refreshing his memory with leading questions.

The Court: I sustain you on that.

Mr. Gremillion: I think he can give the substance if he can't give it in its entirety.

The Court: If he remembers what he said to him in its entirety, even though he can't say it verbatim.

Mr. Gremillion: That's what we are talking about.

The Court: That's admissible.

A. Yes, I asked him that question.

Q. Tell us what you asked him. Even if you can't remember it verbatim, tell us in substance what you asked him [fol. 296] and what was his answer.

A. I asked him that question.

Q. What question?

A. I asked him, "If you had to do it over again, would you do it the same way?" Included in this question were a couple of prefatory remarks by me.

Q. What was his answer?

A. His answer was, "Yes, I would." That is not verbatim, of course. His answer was a little bit longer and more explanatory.

Q. Do you recall anything else that you asked him at that time?

A. I asked him if he expected to win this trial.
Q. What was his answer?

Mr. Organ: I am going to object to that. That has no place whatever in this case, whether the defendant believes he is going to be convicted or not convicted. It's entirely irrelevant and entirely immaterial.

The Court: Unless he made some other statement, other than yes or no, the objection is sustained.

Mr. Gremillion: I can't tell until we get his answer, your Honor.

The Court: I think if he made any statement in connection with the answer, the statement would be admissible but his opinion as to whether or not he would win or wouldn't [fol. 297] win would not, of course, be material.

Q. What was his answer?
A. He said it would be up to Judge Ponder.
Q. Did you ask him anything else?
A. I asked him a number of questions. I don't remember if any others were about this trial.
Q. Nor, Mr. Roane, on or about November 8, do you recall Mr. Garrison making a statement to you concerning his offer to apologize?

Mr. Organ: If the Court please, I object to that. That is grossly irrelevant and immaterial to this case. It has absolutely nothing to do with the case.

The Court: What is the purpose of the question?

Mr. Gremillion: To show an admission of guilt; to show admission against interests.

Mr. Organ: If the Court please—

The Court: You can ask him if he made a statement about it. Let's go off the record.

(Discussion off the record.)

Q. Do you recall such a statement?
A. Yes, but I'd like to explain something, if I may.
Q. Go ahead and explain.
A. I had reported in the paper that the District Attorney had apologized to the Judges in private but refused to do so [fol. 298] in public and he saw me—I am saying now some,

thing that he wanted to be quoted on or put into the story in the future.

Q. Who wanted to be quoted on it?

A. The District Attorney.

Q. And he told you this?

A. Yes.

Q. Go ahead.

A. He said, "I didn't apologize to the Judges. I offered to apologize," and he said if I could work that into the story some time, he would like to see it.

Mr. Organ: If the Court please, I move that the entire testimony be stricken, on the grounds that it in no way whatever could be construed to show any malice whatever and it is offered by the Attorney General, we believe, to prejudice the Defendant's case.

The Court: Let the question and answer be stricken from the record.

Mr. Gremillion: That's all.

Cross examination:

By Mr. Organ:

Q. Mr. Roane, you went to Mr. Garrison's office on instructions from your superior on the date that he made the statement that was published in the New Orleans States on November 2, which is in evidence?

[fol. 299] A. Well, I didn't specifically go there on my superior's instructions. My instructions are to cover this building and that way I felt it was part of my job.

Q. You did not go there at the request of Mr. Garrison?

A. No, I did not.

Q. And you went there to find out if he would give you a statement in response to a statement which had previously been published by former Judge William O'Hara, is that correct?

A. Yes, primarily.

Q. And you asked him if he would give you a statement in response to what was published about Judge O'Hara's statement?

A. Yes.

Q. In his statement he was answering what Judge O'Hara had said and other matters relating to the same subject matter of Judge O'Hara's statement?

A. Yes.

Q. Now, he did not make any effort whatever to make sure that that was published, did he?

A. No.

Q. He did not highlight any particular part of his statement, did he?

A. No, he didn't.

[fol. 300] Q. Mr. Garrison did not have any appearance of belligerance toward any of the eight Criminal District Judges at that time, did he?

A. No.

Q. Did Mr. Garrison make any special effort to get Mr. Hyde to publish that statement, in your presence?

A. No, he didn't.

Q. Now, subject to our objection, your testimony regarding this "Working Press" conference the other day, your testimony is you do not remember all of the conversation regarding this particular defamation charge, is that correct?

A. That program lasted for half an hour and thousands of words, probably.

Mr. Gremillion: I object to that. That isn't his testimony at all.

Mr. Organ: I am asking him. He is under cross examination.

The Court: He is asking him.

Q. I will rephrase my question for clarity, Mr. Roane. At that "Working Press" conference, do you recall substantially everything that was said regarding this case and these charges?

A. I think so.

Q. You are not sure?

A. Well, if you ask me if five questions were asked, I [fol. 301] couldn't say four, five or seven or two, I don't remember the exact number; I couldn't.

Q. Do you know the substance of each question and answer that was asked and answered pertaining to this criminal case?

A. I think so.

Q. If we were to ask you to, could you relate each one?

A. I think I could relate the answers to the questions that I asked, perhaps the other men too.

Q. Perhaps?

A. Perhaps.

Mr. Organ: At this time, if the Court please, we move that the portion of this man's direct testimony relating to that "Working Press" conference be stricken, on the grounds that it's obvious that his memory is not sufficient to bring out all of the facets that were asked and the questions during that conference regarding this case.

The Court: The only requirement of the law is that he must remember the substance of the conversation. It does not need to be remembered verbatim, every word that was said, because it would be impossible for anyone to remember verbatim everything that was said during a conversation. Therefore, the motion is overruled.

Q. Now, when Mr. Garrison made this statement or when [fol. 302] you asked him that question, "Would you do it all over again?" did you specify what you meant by that?

A. Yes, I did. I was referring to the quotes on that, particularly the racketeering influences—the comment that he made.

Q. Did you so state to him?

A. I don't think I used the word "racketeering force." I think I referred to the statement and the seriousness of the statement and the importance of it.

Q. In other words, when you asked him that question, "If you had to do it all over," you didn't say would he make the statement about racketeering influences if he had that to do all over again?

A. As best as I can recall, I didn't use those two words.

Q. Can you recall just what part of this statement that you asked him specifically about?

A. I asked him about the statement.

Q. The entire statement, is that correct?

A. I asked him, yes, would he make his statement over again.

Q. And the fact that you had in mind the particular reference to racketeering influences doesn't necessarily mean that Mr. Garrison had that in mind, does it, when he answered you?

[fol. 303] A. No.

Q. Now, how long have you been covering the Criminal Courts Building?

A. Since the beginning of May—same time that Mr. Garrison took office.

Q. 1962?

A. Yes.

Q. In that capacity, what do you have to do in the various courtrooms in the various sections of the Court?

A. Oh, I try to report what is newsworthy in all the sections.

Q. You go into these sections?

A. Yes.

Q. Do you see what is being conducted in open Court?

A. I try to, as much as possible.

Q. Do you see the Judges when they take the bench frequently and in chambers?

A. I see the Judges frequently on the bench and I see them in chambers occasionally.

Q. Do you cover Section "E"?

A. Yes.

Q. Who is presiding Judge there?

A. Judge J. Bernard Cocke.

Q. Have you ever seen Judge Cocke in his courtroom [fol. 304] on a Friday?

A. Yes—no, I have to take that back. I have not.

Q. You have never seen Judge Cocke in his courtroom on a Friday?

A. No, not on the bench.

Q. Now, do you cover Judge Platt's section, Section "B"?

A. Yes.

Q. Since May, do you recall how many trials you have witnessed in Judge Platt's section?

A. Section "B"?

Q. Yes.

A. I haven't witnessed any.

Q. Not one single trial?
A. No.
Q. Is that correct?
A. That's right.
Q. Is it very frequent, Mr. Roane, that the Criminal Courts here adjourn at noon and all their business is finished and there is no more courtroom business for the balance of the day?
A. Yes, if there is not a trial. This is arraignments and pleadings.
Q. But it is a frequent thing?
[fol. 305] A. Yes.

Mr. Organ: We have no more questions of this witness, if the Court please.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Roane, do you have any personal bias or prejudice against Mr. Garrison?
A. No, I don't.
Q. He is a good friend of yours, isn't he?
A. He is an acquaintance. I consider him an acquaintance, yes.
Q. You are on friendly terms with him?
A. Yes, we are.
Q. Now, has he ever denied to you any of the statements that he made that were published in the States-Item, to you, as a result of the article that was published on November 2?
A. No.
Q. Or the others?
A. No.
Q. Has he ever denied to you any of the articles which you have reported in your paper as being untrue?

Mr. Organ: I object, if the Court please. The articles that this man reports in his paper are no part of this case so far. We don't know what the articles are.
[fol. 306] Mr. Gremillion: He has made a lot of statements to this man and all we want to know is whether they

were correctly reported. We want to show he never complained about it and his method of reporting is correct.

(Discussion off the record.)

Mr. Gremillion: I withdraw the question. That's all.

Recross examination.

By Mr. Organ:

Q. You are on good terms with all of these Judges out here?

A. Yes.

Q. You are on good terms with Judge Cocke in Section "E"?

A. Yes.

Q. Are you on good terms with Judge Platt in Section "B"?

A. Yes.

Q. And all of the other Judges?

A. Yes.

Q. And you know them as a reporter and them as Judges, just like you know Mr. Garrison as a reporter and also as District Attorney?

A. That's correct.

Q. You said that you never saw Judge Cocke try a [fol. 307] case on Friday. How many times have you been in Judge Cocke's court during the past year?

A. Well, I have been covering this beat since the beginning of May.

Q. You said under cross examination that you never saw Judge Cocke try a case on Friday but you saw him in his courtroom. Can you explain that?

A. I didn't say I saw him in his courtroom. I said I possibly might have seen him in his chambers on Friday occasionally.

Q. Where are his chambers with reference to his courtroom?

A. Adjacent to them.

Q. Right in the rear of the bench, is that correct?

A. Yes.

Q. And you saw him in there?
A. I may have; very good chance that I did.
Q. What was he doing when you him?
A. Probably working on some law books.
Q. Do you know what he was doing?
A. Yes, I have seen him occasionally. Sometimes he is doing some research.
Q. Do you specifically recall seeing that on a Friday?
[fol. 308] A. No.
Q. So to the best of your memory, you have never seen Judge Cocke in his chambers or his court on Friday, isn't that right?
A. I can't remember whether it was Monday through Friday exactly. I don't want to deny that I have never seen him in his chambers on Friday.
Q. But you know you have never seen him try a case on Friday?
A. That's right.

Mr. Organ: No further questions.

(Witness excused.)

R. J. Dempsey, called as a witness by the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?
A. R. J. Dempsey.
Q. What is your occupation?
A. Police reporter, New Orleans States-Item.
Q. What is your beat?
A. Police Headquarters, Criminal District Courts Building.
Q. You know Mr. Garrison?
[fol. 309] A. I do.
Q. Is he in the courtroom?

A. He is.

Q. Would you point him out?

A. He is the Defendant at the bench.

Q. Were you present in Mr. Garrison's office on November 2, 1962?

A. I was.

Q. Would you tell us who was there with you in his office?

A. Bert Hyde, reporter for the New Orleans States-Item. Art Roane, reporter for the Times-Picayune.

Q. Do you recall the time of the day?

A. It was in the morning.

Q. Who else was in the room besides those named?

A. As I recall, Pershing Gervais, investigator, Mr. Frank Klein, Mr. Frank Shea, at different times. They didn't stay there all the time, of course.

Q. Did you stay in there at all times?

A. No, sir, I didn't.

Q. What was Mr. Garrison doing on this occasion?

A. He was responding to an interview by Bert Hyde and Art Roane.

Q. What were Mr. Hyde and Mr. Roane doing?

A. They were taking down copious notes in response [fol. 310] to the interview.

Q. Did you hear any of the interview that was transpiring?

A. I did.

Q. What did you hear?

Mr. Organ: If the Court please, the witness has testified that he was not there during all of this interview and it's irrelevant and immaterial if he heard a portion of the statement that was being made at that time. We object to it.

Mr. Gremillion: The purpose of this is to identify that the interview did take place and that certain statements were made in the room regarding the interview.

The Court: Just ask him that.

Mr. Gremillion: That's what I was trying to do.

Q. What happened?

Mr. Organ: We will stipulate that the interview took place and that Mr. Hyde and Mr. Roane reported—Mr. Hyde reported it to his newspaper and it was published. We don't deny this interview.

Mr. Gremillion: You admit that the statement was made?

Mr. Organ: No question about it; no doubt about it.

Q. Did Mr. Shea tell Mr. Garrison anything about the [fol. 311] statement?

Mr. Organ: I object, if the Court please. That has nothing whatever to do with this case; no part of the bill of information. Mr. Shea is not on trial here and has nothing whatever to do with this.

Mr. Gremillion: This goes into the question of malice. That is the purpose of the question. All I am asking him is to tell me what one of the assistants said in the room—what he told Mr. Garrison in Mr. Garrison's presence.

Mr. Organ: I object to that.

The Court: For the purpose of showing malice and restricted to that purpose alone.

Mr. Organ: I wish to reserve Bill of Exception No. 9 on that. I'd like the question, the answer, the objection, the ruling of the Court, all of the information, the bill of information, the record and all of the testimony in our Bill of Exception No. 9. They are trying to go into what Mr. Shea said, not what Mr. Garrison said.

(Discussion off the record.)

The Court: The objection is sustained.

Mr. Organ: In view of the Court's ruling, we will cancel our Bill of Exceptions No. 9 in this case, and our next bill will be properly taken.

Q. Mr. Dempsey, has Mr. Garrison made any other statements to you regarding this matter about the Judges and [fol. 312] so forth?

A. Did I ask Mr. Garrison anything about this matter at that time? You want to know on this day?

Q. On that particular day.

A. On that particular day, did Mr. Garrison make any other reference to the Judges, is that your question?

Q. Yes, to you.
A. No, sir.
Q. At any other time, did you ask Mr. Garrison about this matter, as to how he felt about the Judges?
A. Regarding an apology to the Judges?
Q. Yes.
A. I have asked that question, yes.

Mr. Organ: I am going to object to that, if the Court please. Apology to the Judges obviously has no malice connected with it.

The Court: Any statement that he might have made with reference to it. I have ruled on it. You have already made objection and gotten a ruling. I am the one who has to pass on whether or not Mr. Garrison made these statements.

Mr. Gremillion: I am just trying to ask him a direct question.

Q. Did Mr. Garrison make any statements to you on or about August 20, 1962 with reference to that matter?

Mr. Organ: If your Honor please, this is long before [fol. 313] the alleged criminal defamation—prior thereto. We object to any statements or anything that occurred prior to that as not being relevant or material to this case and certainly with the lapse of time—August 20—certainly could not show any malice.

Mr. Gremillion: This relates to the statement that Mr. Garrison made on November 2 and is designed to show malice. In other words, he made a statement to this reporter which was published and which he reiterates part of in the statement that he made on November 2 to these two reporters and this is strictly to show malice. We refer to it in the bill of information and it's pertinent and relevant to this matter.

The Court: Off the record.

(Discussion off the record.)

The Court: For the purpose of showing malice and for that purpose alone, the Court will allow it to go in. We will recess until one-fifteen.

(Thereupon, at 12:05 o'clock p.m., the trial was recessed, to be resumed at 1:15 o'clock p.m.)

[fol. 315] (Pursuant to the recess, proceedings in the above-entitled and numbered cause were resumed at 1:15 o'clock p.m., appearances being the same as heretofore noted in the record.)

The Court: Are you ready to proceed?

Mr. Gremillion: Yes, Your Honor. Call Mr. Jack Dempsey. He was on the stand.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: Your Honor, while we are getting Mr. Dempsey, just before the recess Your Honor ruled that this evidence would be admissible for the purpose of showing malice. Am I correct?

The Court: I believe you are correct.

Mr. Organ: All right. We would like that our objection and our bill of exception, which applied to any statements taken after the alleged defamatory statements also apply to any statements taken before the alleged defamatory statement, you see, so that we will not have to continually make the same objection.

The Court: All right. Is Mr. Dempsey here?

Mr. Gremillion: They have gone for the witness, Your Honor.

Mr. Organ: The record shows that Your Honor granted our request.

Mr. Gremillion: I can save a little time while we are waiting for this witness. It is stipulated between the State [fol. 316] and the Defense that this witness, Mr. Jack Dempsey, reported in an article which was contained in the New Orleans States-Item of Monday, August 20, 1962, and that the following statements were made to him by Mr. Garrison and reported, to-wit:

Mr. Organ: Let's see if we can't clarify—there's only a couple of quotes in there by Mr. Garrison, but I think is that whoever the statements are attributed to did report them to Mr. Dempsey.

Mr. Gremillion: I think they speak for themselves.

Mr. Organ: I think they speak for themselves, too. Mr. Garrison didn't give all the information. That is obvious from the text of it.

Mr. Gremillion: I am not trying to be argumentative. I am just trying to get the record straight. If this is his report, I think this is what we both want in.

Mr. Organ: That is correct.

Mr. Gremillion: The report published that particular day. (Reading.)

"District Attorney Jim Garrison will return to town today with First Assistant Attorney Frank J. Klein from Philadelphia where they attended a National District Attorneys' Convention. Confirming the action taken by Judge O'Hara and his two colleagues, he [fol. 317] he said, 'The action does not apply to emergency cases such as extradition proceedings. The Judges want to set up a system,' said Garrison, 'and I think they are right.' Garrison said, 'When they took office, there was only $1,200.00 in the Fines and Fees Fund, which by law the District Attorney's Office supervises. We built up that fund from forfeit bonds to where there is presently in excess of $ 000.00. We would like to buy new furnishings for the office at no expense to the citizens and will set up a policy of calling for bids on all purchases, so that both the spirit as well as the letter of the law will be upheld.' Garrison volunteered he may go into his pocket to pay several bills now due in order to protect the good faith and credit of the District Attorney's Office. He said he may draw a loan from one of the banks to pay off certain bills in order to live up to the contracts. Two stenographers have been added to the [fol. 318] D.A.'s staff in recent weeks to replace two regular employees on vacation. Inasmuch as the Judges have declined to sign judicial orders on the Fines and Fees Fund, it may be that Garrison will have to make the bank loan to see that they will be paid their salaries on schedule. Judge O'Hara has stressed that the decision in no way casts any reflections on the District Attorney or his staff. However, he has expressed a

desire to revamp the administration of the funds and will meet in October in an en banc session to that end."

(Reporter's Note: The article quoted was not available to the reporter at time of transcription for verification, and the above is a transcription from the notes as they lay.)

And I would like to—

The Court: Off the record.

(Discussion off the record.)

The Court: Take this for the record, please.

Mr. Gremillion: Let me just say this for Your Honor before you rule. Your Honor, let me say for the record [fol. 319] that it is our contention that this is all part of a scheme, to show intent, which goes to prove system, which goes to prove malice, and that we will connect these things up as we go along. I can't put my case on all at one time. It is going to take me a couple of days at least, but all of this is part of the program that shows defamation, and that is our reason for wanting to put it in the record.

The Court: At this time, the Court will not permit it to be made a part of the record for the reason that the Court is allowing these statements made upon other occasions, both before and after the alleged defamatory statements, for the sole purpose of showing malice. The statement offered does not show a malicious intent, but rather an intent of cooperation, and, although it might be inconsistent —or perhaps any future actions in the matter of protecting the person who is not before the Court from the inconsistency—but under the actions or statements made which may be in any manner defamatory in connection with the statement that was issued in the press of November 2, 1962, I will say at this time that I am ruling it out at this time for the reason that I don't think the record at this time justifies the introduction of the statement. If the record subsequently justifies the introduction of the statement, then the Court will allow it filed, but at this time I do not consider it admissible in evidence.

[fol. 320] Mr. Gremillion: Well, as I understand it, we will have the right to re-offer it in the event we can connect it?

The Court: If you can show that it would have legal effect in the trial, of course it can be offered.

Mr. Organ: I am sorry. I didn't hear Your Honor.

The Court: I am sorry—I am not equipped with a microphone here—that everybody seems not to be able to hear me. I did not allow this to be introduced. Did you want to reserve a bill, or did you not?

Mr. Organ: No, no. The only thing is that I asked Your Honor to make our objections to these statements apply to statements made before as well as after. We have no specific objection to this, to what he was there introducing, and we have no bill.

The Court: You want to allow it to go in then?

Mr. Organ: We will allow it to go in.

The Court: I didn't think you wanted to. I didn't think you thought it was admissible.

Mr. Gremillion: Your Honor, we offered it as a stipulation.

The Court: All right. Mark that as "State's Exhibit No. 2."

Mr. Gremillion: May I be off the record just a second?

[fol. 321] The Court: Yes. Off the record.

(Discussion off the record, during which the document offered by stipulation between the parties was duly marked for identification as "State's Exhibit No. 2" and received in evidence.)

R. J. Dempsey, having been sworn and having testified previously, resumed the stand for a continuation of the

Direct examination.

By Mr. Gremillion:

Q. Mr. Dempsey, did you have any further discussions with Mr. Garrison concerning this case as to what activities he might take against the Judges?

A. Yes, I did.

Q. When was that, and tell us what you were asking.

A. I wouldn't remember the exact date. However, in his office at a subsequent time I asked the question if he considered taking this matter before the Orleans Parish Grand Jury, and he indicated that he did.

Q. Did you ask him what he meant by his comment, by any of his comments, in a subsequent conversation or a conversation about this time?

Mr. Organ: I am going to object to that. I don't know what comments Counsel is referring to.

[fol. 322] Mr. Gremillion: If you will let him answer, maybe he will—

Mr. Organ: I think the record should show what comments the Attorney General is referring to. Comments about the Grand Jury?

Mr. Gremillion: I am speaking about the comments about taking this before the Grand Jury.

Q. Did he tell you what he intended to take before the Grand Jury?

A. Yes, yes, he indicated that he was seeking three witnesses, three witnesses who would be called before the Grand Jury in connection with this case. His investigators reportedly went out to subpoena these witnesses to bring them in, but it never materialized.

Q. Well, did he tell you the purpose of this?

Mr. Organ: If the Court please, the obvious purpose for bringing anything to the Grand Jury is to either seek a true bill or no true bill. Now, I don't think that this witness is competent to go into the purpose of that.

The Court: He can repeat what Mr. Garrison might have said in that connection, and you can make your general objection to that.

Q. Did Mr. Garrison refer to you the charges against the Judges that he was thinking about taking before the Grand Jury? Concerning what?

[fol. 323] A. I don't think he used the word, but I understood malfeasance charges. However, in fairness to Mr. Garrison, I don't believe he used that word, malfeasance.

Q. Did he tell you whether or not he was figuring on bringing any charges against the Judges concerning any influences?

Mr. Organ: Now, if Your Honor please, this is grossly leading.

Mr. Gremillion: No, it is not.

Mr. Organ: It is grossly leading the witness, if the Court please, and I submit it is irrelevant and immaterial if Mr. Garrison considered bringing charges against the Judges. He is the District Attorney, and that is the District Attorney's duty. It can't possibly be malicious if he is considering bringing charges. Why, that is his absolute duty under the law. If he believes there is any reason for bringing charges, it is his absolute duty to consider bringing them. That can't be malice.

Mr. Gremillion: If Your Honor please, that is the very point I am trying to prove. This man as District Attorney knows what racketeering and racketeering influences mean. He knows that if any Judge has committed any wrong, he knows there are other remedies. The mere fact that he didn't take that procedure and chose to place it in the hands of the public—he went out of bounds in his com- [fol. 324] ments and chose to leave it that way. That is the nature of the State's case and the basis of our case, and I want to prove from this witness that he made certain comments regarding those influences. Now I am trying to be as fair about this as I can. I don't want to ask leading questions. I am trying my best to conduct my case, and, if you will let me ask this question, I will bring it out and give you a fair trial.

Mr. Organ: If the Court please, that the District Attorney considers bringing charges to the Grand Jury is patent in the law as his duty.

The Court: Of course, the District Attorney can file a Bill of Information. Malfeasance would be a misdemeanor, I believe. However, as I say, any statements that he might have made—I mean, you can make—I believe you made your objection general to this line of testimony, any statements that he might have made with reference to this par-

ticular defamatory statement—a general Bill of Information would be admissible. Now this is not for the record.

(Discussion off the record.)

The Court: Go ahead and answer the question.

Q. Mr. Dempsey, do you recall the question?

A. Yes, sir.

Q. Would you please answer it.

A. Yes, sir. I asked him about the racketeering in-
[fol. 325] fluences, just what he meant by that, and his response was that he didn't mean that the Judges themselves were tied up with racketeers or that the racketeers influenced them in their conduct of their office, but rather that—using the example of a person who might be a friend of a Deputy Sheriff, who might be a friend of a court attache, who then might get a favor from the Court, and that could be explained as racketeering influence, although it is very indirect and very far afield.

Q. That was his remark to you?

A. Yes, sir.

Q. Now did he tell you that he was anticipating bringing these charges of racketeering influences against the Judges before the Grand Jury?

A. Yes, sir.

Mr. Gremillion: No further questions.

Cross examination.

By Mr. Organ:

Q. How long have you been covering the Criminal Court, Mr. Dempsey?

A. Close to 14 years.

Q. You are very familiar with all of the Judges here—

A. Yes, sir.

Q. —as well as the District Attorney?

[fol. 326] A. Yes, sir.

Q. How much time during the day do you spend over here on an average?

A. Each day from 6:00 a.m. until 2:30 p.m., sometimes after 2:30.

Q. Now, is it a fair statement that very, very frequently the Courts will be finished with their courtroom work by noon?

A. Yes, sir, very frequent.

Q. Is it also a fair statement that they hold no trials in Section "E"—that is Judge Bernard Cocke's court—on Friday?

A. That is correct.

Q. Now, when was the last time that you saw a trial being conducted in Section "B," that is, Judge George Platt's section?

A. I can't recall whether it was the Captain Clark—the former Night Supervisor of Police—or whether it was the Mayerhafer case, but it was one or the other, whichever came last.

Q. About how long ago was the latest of those cases?

A. I would say about four or five years ago.

Q. Now, Mr. Dempsey, were you in the witness box—

A. May I explain that last answer please about—

[fol. 327] Q. Oh, sure.

A. —Section "B"? Let me say this, that I have seen in chambers, of course, the business of the court being conducted, pleas being accepted by the state, perhaps lesser pleas or perhaps guilty as charged. In fairness to Judge Platt, now, I don't mean to infer that the last time there was a case in his court was four or five years ago. That was when there was a jury trial. Now, there may have been some lesser trials since then, which I did not cover. I mean, I want to be completely fair to the Judge in this case.

Q. Well, so do we, Mr. Dempsey.

A. Certainly. That is why I knew you would appreciate that explanation.

Q. When is the last time you remember a trial actually being conducted in the courtroom itself?

A. Once again now, in complete fairness—I don't cover every trial in every court in this building, as you can appreciate—I couldn't possibly do it—so there may very well have been trials in Judge Platt's court that I haven't

covered, but the one that I covered in his section of court with a jury was about four or five years ago, to the best of my recollection.

Q. At the very least? It is most unusual when there is a trial being conducted in Section "B," is that not so? [fol. 328] A. I would say so, yes.

Q. All right. Now, this business that is conducted in the chambers, those are not trials? Those are pleas, those are informal proceedings, are they not?

A. Yes, sir, but it is Court's business right on.

Q. Yes, but they are not trials?

A. Trials in the sense of jury trials, no, sir.

Q. Are those guilty pleas where—

A. Yes, sir.

Q. —they are not receiving evidence?

A. Not receiving evidence, no, sir. They are receiving sentences or—

Q. Now, were you in Section "E," specifically sitting in the witness box, on a recent day when the presiding Judge, Judge Bernard Cocke, told an attorney—Mr. Lyall Shiell, I believe—substantially that, "I will not try cases on Friday for you, the District Attorney, or anyone else, because it inconveniences me"?

A. His exact words were, "I am not going to be pressured by the District Attorney to hold Court on Friday, the District Attorney or anyone else," yes, sir.

Q. Did he say that it inconvenienced him?

A. No, sir, I really don't remember that he used the word "inconvenienced." He may have now. I am trying to be abundantly fair here, but I just don't remember the [fol. 329] word "inconvenienced." I do remember him saying in response to the situation—the way it came up, I was in Court on another matter, and the only reason it wasn't reported as such in the paper, the Judge's comment, was because the Judge's comments were in response to a second matter, if you please. There were two matters before the Court. Mr. Shiell, who was the attorney in both matters, had interrupted one to plead another client in a second case, and he asked that the matter lay over until Friday, and that brought the response from Judge Cocke that he

was not going to be pressured by the District Attorney or anyone else—if I remember his exact words—to hold Court on Friday. I don't remember the word "inconvenienced." However, I really don't—it could possibly have been said, but I don't remember that.

Q. He may very well have said, " . . . because it inconveniences me"?

A. If he did, I didn't hear it or I don't remember it.

Q. You didn't report that in your paper, did you?

A. No, sir, I didn't, because of the—I was on deadline for the case which I was reporting, the more important of the two, and in order to get the Judge's remarks and keep them in their proper context and their proper importance, I would have had to get the name, age and address of the [fol. 330] person in the case to which he was referring—do you follow me?—the second case. I would have had to stop and get all of that, and I couldn't interrupt the Court to get the court record in that case. However, I had my material from the case which—I was sitting in the jury box just opposite the witness bench—I had my material on that particular case, so I left the courtroom shortly after those words were uttered by the Judge, and I reported the particular case in question. I intended to come back and get the Judge's remarks plus the case, the second case.

Q. You are very friendly with Judge Cocke, aren't you, Mr. Dempsey?

A. I think I am friendly with all the Judges, yes, sir.

Q. But you are particularly friendly with Judge Cocke? You spend a lot of time in his court and in his chambers with him?

A. I wouldn't say a lot of time. I spend time in the Judge's chambers, yes, sir, and I spend time in Judge O'Hara's chambers, Judge Wimberly's chambers—

Q. Now you know, do you not, that Lyall Shiell has no connection with the District Attorney's Office?

A. That is correct.

Q. There was no one from the District Attorney's Office that asked the Judge to set that case on Friday. Isn't that [fol. 331] correct?

A. That is correct, but the remarks were made immediately after a heated controversy between the Judge and

the Assistant District Attorney in Section "E," Mr. Steve Plotkin.

Q. Mr. Plotkin had asked the Court to set that case on Friday?

A. No, sir.

Q. Mr. Shiell?

A. Yes, sir.

Q. The Defense Attorney asked that it be set on Friday?

A. Yes, sir.

Q. And the Judge refused?

A. Yes, sir. I think it was for the edification of the Assistant District Attorney honestly that the remarks were made, though it was for the entire court. He said it from the bench.

Q. You think that the Judge was taking a crack at the Assistant District Attorney then?

A. I wouldn't say he was taking a crack at him, as you put it. I would say that the issue of his working on Friday was certainly one of the moment. It was the source of remarks made by the District Attorney in several public utterances, and I think the Judge may have used that [fol. 332] particular time as being propitious to stress that he wasn't going to be pressured into coming down. Those are the words that I remember: "The District Attorney is not going to pressure me into coming down here on Friday," because the Judge doesn't come down on Friday for a reason. He goes to the law library.

Q. Tell us what was said, Mr. Dempsey, not what you think please.

A. All right.

Q. It is very frequent that that Judge—

Mr. Gremillion: Just a minute, if Your Honor please. I want to say this. Pardon me for breaking in, but, if he knows that as a fact, he can certainly testify to it and it is responsive to his question.

Mr. Organ: His opinions on why a Court sits or does not sit on Friday I don't think have anything—

The Court: He can't express it as a matter of opinion, but, if he knows it as a matter of fact, it wouldn't be a matter of opinion.

The Witness: I think I know it as a matter of fact, Your Honor.

The Court: All right. Put it in.

Mr. Organ: If the Court please, then I think that is something to be brought out by them on redirect.

The Court: He is on cross-examination. He can complete [fol. 333] his statement on that. Go ahead, Mr. Dempsey.

Mr. Organ: All right.

Q. Now, Mr. Dempsey, tell us—remember, you are here to be impartial, like you said a few minutes ago—

A. That is correct, that is correct. I have no desire to be otherwise.

The Court: Go ahead and state it.

A. (Continuing) I have been out here, as I said before, 14 years. I have seen Judge Cocke try cases on Friday. As a matter of fact, I have sat in his Court when cases have started on Wednesday and lasted through Friday, but, as a general rule, Judge Cocke always held Friday open to go to the Supreme Court to the law library to do research, to write his per curiams, to do his court work that he does not get the opportunity to do, and also to give the Assistant District Attorney—in previous administrations the Assistant District Attorney in that particular section took Friday in which to prepare his dockets for the coming week, to prepare his cases, to interview witnesses, and the like. That is true, Mr. Organ.

Q. Now, getting back to what you said a few moments ago, you said Judge Cocke took that opportunity to answer the District Attorney's Office from the bench?

A. Yes, sir.

Q. He does that quite frequently, doesn't he? In other [fol. 334] words, he blasts the District Attorney's Office from the bench, does he not?

A. What do you mean by "blasts" now?

Q. It is reported in your—what newspaper are you with?

A. The States-Item.

Q. Isn't it reported very frequently about Judge Cocke's blasting?

A. Whatever he does, I report—if it is newsworthy enough to report, I report it.

Q. And he does it very frequently?

A. I don't know what you mean by "very frequently." Now I am not trying to argue the point. Please believe me. I don't want to say "frequently." If you mean three times a week or five times a week—I don't know what you mean. I am not trying to argue the point.

Q. Compared to the other Judges.

A. More so than the other Judges, yes, sir, that is true.

Q. And in addition to that, you have sat in his chambers many, many times, haven't you, and heard him use very vituperative language about the District Attorney, the Defendant in this case, have you not?

A. Yes, sir, and by the same token. I have sat in Mr. Garrison's office and heard him blast the Judges, so it is a [fol. 335] sort of a tie, it's a stand-off.

Q. So you would say then that this is a running fight between the Judges and the District Attorney? Is that your testimony?

A. You said "fight"?

Q. Well, whatever you want to call it?

A. You are asking me my opinion now?

Q. Well, I am just asking for your testimony. You know the facts. In other words, you said that you were going to give us impartial facts.

A. That is correct, and I hope to do that.

Q. Good.

A. You said that I have been in chambers and heard the Judges blast the D.A. I have been in the D.A.'s office and I have heard the D.A. blast the Judges by the same token, so, if blasting each other constitutes a fight, I guess we have got a pretty good fight going, yes, sir.

Q. And this was going on, and all of a sudden one day the District Attorney was charged with defamation?

A. As this was going on, one day—

Q. Well, during the course of these exchanges—

A. Yes, sir.

Q. During the course of these exchanges, then one day the District Attorney was charged?

A. Yes, sir.

[fol. 336] Q. Now isn't it a fact that there are many, many statements made by Judge Cocke blasting the District Attorney's Office that you did not report to your newspaper?

A. Mr. Organ, I don't report things that are given to me in confidence. I don't violate the sanctity of a man's chambers, and I think that it is well established that when a Judge tells you something in chambers, you don't report it unless you ask permission and the Judge gives you the right to report it. Now, I would be a pretty poor reporter if I was to report and break a confidence, and I wouldn't last long around a building like this.

Mr. Organ: That is all the questions of this witness, if the Court please. No, I have another one:

Q. Mr. Dempsey, do you recall a statement by Judge Cocke in August that the District Attorney was *persona non grata* to him?

A. I read such a remark, yes, sir, in the papers. It was reported at another building. I remember the remark. I remember the quote.

Q. That was in August of 1962?

A. I think it was, Mr. Organ. It was at the pardon board session and it was reported by another reporter, but I recall having read it, yes, sir.

Q. And it was recorded in your newspaper that Judge Cocke said the District Attorney was *persona non grata* [fol. 337] to him because he had put an undercover man in Parish Prison and caught Peter Hand in the act of soliciting bonds without a license? Isn't that correct?

A. Now once again I am not arguing the point but the story will speak for itself, because I really don't remember the exact—

Mr. Gremillion: Object to that. That is obviously hearsay.

Mr. Organ: All right. I will withdraw it.

Q. Do you know anything about what Judge Cocke said about a letter that Mr. Garrison wrote the Pardon Board asking them to return certain bond money to the United Bonding Company?

A. No, sir, I don't.

Q. You don't know anything about that?
A. No, sir.

Mr. Organ: All right. No further questions.
Mr. Gremillion: Are you finished with the witness?
Mr. Organ: Yes, sir.
Mr. Gremillion: That is all.

(Witness excused.)

Mr. Gremillion: The State calls Jack Kneece.

JACK KNEECE, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was ex-[fol. 338] amined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?
A. Jack Kneece.
Q. How do you spell that?
A. K-n-e-e-c-e.
Q. Where do you live?
A. 824 Bourbon Street.
Q. New Orleans?
A. Yes.
Q. Who do you work for?
A. Times-Picayune.
Q. What are your duties?
A. I am a General Assignment Reporter.
Q. Did you cover a meeting of the Press Association in the International Trade Mart Building on Saturday night, January 12, 1963?
A. Yes, sir.
Q. Did the Defendant in this case, Mr. Jim Garrison, make a talk to that group?
A. Yes, he did.
Q. Do you know Mr. Garrison?
A. Not as a friend, but I am acquainted with him.

Q. Well, do you know him when you see him?

[fol. 339] A. Yes, sir.

Q. Can you point him out in the courtroom?

A. (Indicating) He is the gentleman with the dark blue suit and the striped tie.

Q. Is that the same gentleman who made a talk to the Press Club?

A. Yes, sir.

Q. How long did he talk?

A. About 15 to 20 minutes.

Q. What was his manner of talking?

A. Well, he seemed to be in a pretty light-hearted mood, I mean, you know, sort of a joking mood. He wasn't in dead earnest or very serious.

Q. Well, was he speaking ridiculous?

A. No, he wasn't speaking ridiculous, but it was more of an informal talk than some that I had heard him make in the past.

Q. Would you say he was serious?

A. I would say he was serious part of the time but not all of the time.

Q. How many people were at this gathering, approximately?

A. Probably from 150 to 200, I would say.

Q. Now, did Mr. Garrison say anything about this case?

[fol. 340] Mr. Organ: If the Court please, I am going to object to that. The witness has testified that he considered part of it serious and part of it joking, and, unless he said something of a serious nature about the case, I don't think it is admissible, if he said something was a joke.

The Court: That is argumentative. It would go more to the weight attached to the evidence rather than to the admissibility.

Mr. Gremillion: Your Honor, I would like to say this—

The Court: I have already ruled on it.

Mr. Gremillion: Thank you.

Q. Now, what type of people attended this meeting?

A. I would say most of them were Press Club members and members of the press—people from around the state and a few attorneys and—let's see—just a scattering; just

a sort of a cross-section of business people who also hold membership in the Press Club.

Q. Now, what did Mr. Garrison say about the charges that he made against the Judges at this gathering?

A. Well, he went over much of the same ground that he had in other talks before.

Q. Did he reiterate any of the remarks that—

A. Yes, he did.

Q. What did he say?

[fol. 341] A. He said—he mentioned the same thing—that it couldn't help but raise the question of racketeering influence.

Q. What couldn't help but raise the question of racketeering influence?

A. The fact that his operating funds were cut off at sort of a crucial moment in his investigation of French Quarter activity.

Q. Now, was he serious then or in a light vein?

A. I think he was serious at that time.

Q. Did he say anything else about this case?

A. Yes, he said—in what I interpreted as a joking mood, he said that even a bookie wouldn't take odds on the fact that he would be convicted.

Mr. Organ: If Your Honor please, I am going to move that that be stricken. That was obviously put into the record to prejudice the Defendant and has no real—certainly it doesn't show any maliciousness in any way, shape or form. I move the question and answer be stricken from the record.

The Court: What is the purpose of introducing it?

Mr. Gremillion: The purpose of introducing it is that we have said in the Bill of Information it subjected the Judges to ridicule. Here was a very important gathering of Press Club members and he could in a light vein show ridicule and contempt for this particular Court, talking [fol. 342] about the Criminal District Court, and that that was the reason some of his statements were in a light vein and some of them were in a serious vein.

The Court: Well, at this time, whether it was said in a jocular mood or whether it was said in a serious vein, it

would be a statement by him and perhaps more importance would be attached to it were it in a serious vein than would be attached to it if it were in a jocular mood, but at the same time it would go to the weight to be given to the statement rather than its admissibility.

Mr. Organ: Your Honor, do I understand my motion to strike from the record is sustained?

The Court: No, it is overruled.

Q. Now, did Mr. Garrison make any other statements about the Judges on this occasion, at that time?

A. Yes, he said he was pretty certain that he would be convicted but he expressed the opinion that it would probably be reversed by a higher court.

Q. Did he mention the higher court?

A. No. I think he was pretty general. I think he said it would be taken to the highest court that would be necessary to get a reversal.

Mr. Organ: If Your Honor please, I am going to make the same objection. I presume the ruling is going to be the same, and I would like to reserve a bill of exception. [fol. 343] I respectfully reserve Bill of Exception No. 9 to the Court's ruling denying our motion to strike this evidence, and I will ask that the Bill of Exception include the question, the answer, our objection to it, the Court's ruling, all of the evidence in the case, and the entire record.

Mr. Gremillion: We have no further questions.

Mr. Organ: I have no questions.

Mr. Gremillion: You are excused. Call Mrs. Walter Shean.

The Court: With reference to the last statement to which he reserved a Bill of Exception, that evidence was refused to be stricken from the record for the reason it was found to be introduced under the general ruling that the statement he made with reference to this case was admissible only for the purpose of showing malice, and the evidence is restricted to that and to that alone.

[fol. 344] Thereupon, THERESA E. SHEAN, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. Mrs. Shean, what is your name?
A. Theresa E. Shean.
Q. Where do you live?
A. 5225 Conti Street, C-o-n-t-i.
Q. That is here in New Orleans?
A. Yes.
Q. Where are you employed?
A. I am employed as the official court reporter in Section D, Judge Thomas M. Brahney's court.
Q. How long have you been so employed?
A. Since April of 1958.
Q. Were you present at a meeting sometime shortly after these charges were filed in which Mr. Garrison spoke?
A. Yes, sir.
Q. Where was that meeting?
A. That was at the St. Anthony auditorium which is my parish.
[fol. 345] Q. Do you recall the date?
A. Yes, December 5, 1962.
Q. How did you happen to go there?
A. I was invited, my husband and I were invited through a little notice that was in the Church bulletin on the Sunday previous to December 5, 1962.
Q. Do you belong to that Parish?
A. Yes, I do. I go to church there every Sunday.
Q. And this was a church meeting, as I understand?
A. Yes. Well, it was a meeting for the general members of the Church in the auditorium of St. Anthony.
Q. Was it announced when you read this bulletin, was it announced that Mr. Garrison would speak?
A. Yes, it was. It was a special notice in the Sunday bulletin announcing this meeting.
Q. You know Mr. Garrison, of course?

A. Yes, I do.
Q. Can you point him out?
A. Yes, right there. (Indicating)
Q. Mrs. Shean, did you hear Mr. Garrison talk?
A. Yes, I did.
Q. Did you hear questions and answers?
A. Yes, I did.
[fol. 346] Q. After he talked?
A. Yes.
Q. Did you transcribe, did you make shorthand notes and transcribe those notes?
A. Yes, I did.
Q. In their entirety?
A. Yes.
Q. Do you have them with you?
A. Yes, I do.
Q. May I see them?
A. Yes, sir. This is a speech. (Producing papers) and this is the answers and questions.

Mr. Organ: If your Honor please, if we may have a couple of minutes to read this, we might stipulate and save some time. If the Court please we will stipulate the statement is substantially—we have no—

Mr. Gremillion: I understand that you stipulate that these are the remarks that he made.

Mr. Trent: Substantially.

Mr. Organ: Yes. Of course, he can't read word for word what he said but substantially.

Mr. Gremillion: Sorry, I am going to qualify the witness because she took it down word for word and she has got her notes.

Mr. Organ: We will stipulate.

[fol. 347] Mr. Gremillion: In connection with the witness's testimony and the stipulation by the Defense, we will ask that this be marked "State's Exhibit Number Three." Would you please read this?

The Witness: Read it all?

Mr. Gremillion: Judge, I have no way of informing the Court of it unless we read it.

The Court: It is an exhibit. Of course, I have a right to read it myself.

Mr. Gremillion: Oh, yes.

Mr. Organ: No question.

Mr. Gremillion: I have no further questions, your Honor.

The Witness: That is all?

Mr. Gremillion: Thank you, ma'am. Your Honor while you are looking at that, could I speak to Defense counsel just a minute?

The Court: Yes.

Mr. Organ: If the Court please, since this is a public hearing, I am going to move that this statement be read in its entirety at this time and either Mr. Gremillion or Mr. Garrison or myself or anyone could read it but I think it should be read.

The Court: Any objection on the part of the Plaintiff? [fol. 348] Mr. Gremillion: I have no objection to the reading of it at all.

The Court: When the State asked for it a moment ago. If you both want to read it—I don't think the public is particularly interested, but if you want to read it, we will read it. Do you want to read it?

Mr. Organ: Ask Mr. Garrison. He may be able to read the statement.

The Court: No.

Mr. Gremillion: It is my exhibit. If it is going to be read I would like for somebody from my side to read it.

Mr. Organ: All right.

The Court: Just have the record show here this is read by agreement of counsel for the State and the Defendant.

Mr. Jackson: This is the text of the State's "Exhibit Number Three:"

STATE'S EXHIBIT No. 3

Transcription of shorthand notes taken at the meeting held at St. Anthony's Auditorium on Wednesday, December 5, 1962 by Theresa E. Shean.

Ladies and Gentlemen, let me say first that I am pleased to be able to come speak before this particular group. I didn't know there would be so many people but while I [fol. 349] don't have a prepared talk, what I want to talk on is something close to me so the more people who hear

it, the better. I understand that the last speaker you had was Hap Glaudi who has a program that says, "I speak as I please." Because that is my problem, I want to say a few words about freedom of speech—a matter of interest to me these days.

As you know, I have been charged with criminal defamation for criticizing some government officials and it is an interesting thing. In history, the victim, the complainant, is always some government official; whether an official in East Germany or where, some government official has been wounded and feels that the state has been put in its greatest danger and the only thing, if it is a serious matter, something that's even more serious is the habit of charging people with a crime who dare to criticize or speak freely. Of course we accept the fact that freedom of speech is a fundamental right in this country. We have memorized something out of history so that we can recall that freedom of speech, as well as freedom of the press, is one of the guardians that the first amendment provides.

[fol. 350] I want to tell you that it will not be protected unless people keep fighting for it. It takes individual human beings. Every now and then we forget about these rights and they begin to disappear. The moment we do forget, we don't have them. A good example is that the Russian people were guaranteed freedom of speech in the Constitution of 1924 and the only difficulty is, who has it and what does it require. They don't have jury trials in Russia so, consequently, when a person criticizes a public official in Russia, they call it defamation and if they protest it, if they call it freedom of speech, he is wasting his time because he is talking to the person he offended. There is no jury to talk to. This first amendment becomes increasingly clear to me. Why this is the first amendment and not the third, I don't know. The reason freedom of speech and of the press is the first amendment is because, if you can close the door on these freedoms, you close the door on all the other freedoms. If you can prevent people from criticizing and telling the truth, then all of the other freedoms become lost, because you can stop anything else. You can stop jury trials or they can come into your homes—

[fol. 351] and who is to print it if there is no freedom of

the press. If an individual criticizes the government they give an unfair trial to the person and the government can stop this individual. Then, the fair trials will disappear. This is the most important Constitutional amendment. I think it is unfortunate in this particular case. I would say that my criticism about the judges was something that anyone of you has a right to say. Anyone has a right to criticize, not only the judges, but me. He has a right to criticize the President of the United States. If anyone criticizes me in my office, I will not charge them.

Furthermore, there were criticisms that lawyers should make but rarely do because, for some reason, these lawyers seem to have lost their concern as guardians of our Bill of Rights. There was a time when lawyers came forth fighting for the Bill of Rights but now they are hard to find. I find, to my surprise, that the general run of people in different provinces seem more concerned about the new automobiles in New Orleans. There is a disappearance of the Constitutional guarantee of freedom of speech. What I said, I again say and as District Attorney, it was my [fol. 352] duty. It pointed out that these courts are not working as they should. Especially, since the Parish Prison is over-crowded. I pointed out that these holidays on Fridays, which has been the custom, just can't continue with the Parish Prison crowded as it is. The two and one-half months vacation are not reasonable. In all fairness, it can be said that these judges did not invent this system. They inherited it. But this is the time to go into a fulltime operation and have the jury trials. The summer vacation of two and one-half months originated in 1921 because the courtrooms were so hot without the appliances we have today but now they have air-conditioning in the Courtrooms but, unfortunately, the courtrooms are empty and the Parish Prison is jammed all summer long where it is hot. I feel I would not be doing my duty if I did not point it out in positive terms. Whether it is good taste or not is irrelevant. The point is that the Parish Prison is crowded and they have too many holidays. Although these judges didn't invent this system I think they should live up to the Constitution. The average courtroom has approximately

seventy or seventy-five jury days a year and since we have [fol. 353] so many awaiting jury trials, my thought is that it might be possible to increase these jury days.

The other point is that there is nothing complicated about the fines and fees expenditures, although if you read a long list of expenditures it can look any way you want it to. In that regard, this is not tax money. We have reduced our budget from the City voluntarily. We sent money back to the city. Fines and fees comes from the bonding companies and this is what we have improved our office with. Secondly, this money has to be spent by December 31st or we have to give some of it to the city. So, we have gotten $60,000.00 and I conclude that this is the time to get the equipment that we need, and that's what we have been doing. So, if you hear anybody say that we are throwing money away, this is not true. This has to be spent. The law encourages the District Attorney to spend it so it won't be built up. We have about $40,000.00 and what we don't spend, will have to be given away. It's a practical matter. And my hands are still tied. We were conducting a real aggressive operation against B-drinking in New Orleans and this is much more vicious than it appears to be. It [fol. 354] isn't just a matter of a few drinks. It's a full-fledged prostitution. It's nothing less. For some reason it has flourished over the years, but nothing ever happens. We have a police raid now and then and the vice squad strikes but the place continues. The visitors come down here and their wallets disappear and nobody does anything about it. I decided it is time to do something about it because I am going to enforce every law. As I pointed out to you, I was elected by the people of New Orleans. I am trying to give the District Attorney's Office a good job. In doing that we began closing some of these joints by harassing them. Whenever we see B-drinking violations, we would hit them again and again. It was at this time that the judges began to send their messages, no more money. I don't care what you saw in the newspaper today, they sent them in no uncertain terms. That's when the beginning of this conflict came—when our investigations were stopped, and stopped they were by the judges. Any-

way, I pointed that out. I said that when, in the midst of an operation, the judges cut off my funds, it raises interesting questions about racketeering influence. If you can think [fol. 355] of any other question it raises, I would like to know. It doesn't raise the question that this joint used to be in the same place or that they are the same owner. It doesn't raise any question that they are trying to help the District Attorney. I don't know exactly what the answer may be but I do know that when any public official tries to prevent a District Attorney from doing his duty, somewhere questions are raised. So, I told the people what was going on, so when I did that, I committed that criminal act. So you see not only a District Attorney, but a criminal. I think they charged me with the wrong thing. They should have charged me with treason. I publicly protested about the system and you are not supposed to do that because it has always been that way. You are not supposed to point out to the people that there are too many holidays. You are not supposed to point out that your investigations have been stopped. This is treason. Not too many centuries ago we would have had a trial on treason and they could have chopped off my head. Criminal defamation is all right for me but it is treason. The Bill of Rights is being violated because any citizen has a right to point out the logical question when the District Attorney has his money [fol. 356] cut off by other public officials without any precedent. Never before in the Criminal District Court have any judges shown the slightest interest in what the District Attorney spends. There was never any interest at all. Now, they have become very conscious of it and examine it so closely that when we bought four automobiles and managed to get them under the wholesale price, they want more evidence. We got these automobiles under wholesale price and now this concern by the judges of the expenditures has never before been questioned in the slightest degree until the first B-drinking joint began to cave in. I don't care what reasons they give. Several, I understand, don't like the color of my rug. The point is what did they do. They stopped the investigations when they were really rolling. That is the fact that remains. Two things have

happened since we have been there. The District Attorney has started the most successful investigations in history and the other thing is that the judges cut off funds when it was well under way. I went to a bank and borrowed money, $5,000.00, and we kept it going because I wasn't going to get any money. I put that in my account because the judges [fol. 357] have no supervisory control over me. They don't have any and there won't be any one of them that will control this District Attorney's office for the next three and one-half years. Of course I imagine that's one of the things they would like to do. We borrowed the money and continued with our work and, as a result, they are all gone off Canal Street and they won't return for three and one-half years. The B-drinking on Bourbon Street is no different. It's a violation of the law and we are going to eliminate it. I don't care if we know who owns it or not, if they violate the law systematically, we are going to stop it but the amazing thing is that anyone seeking to do his duty to the letter to have so much trouble with the people. Actually, we have had very little trouble with criminals but many of the people were supposed to be on our side have been a thorn in our sides and they have done much more harm and all we are trying to do is set out to stop these violations and we are going to but, in the course of doing this, I find I am now a defendant in the Criminal District Court. As an interesting parallel, not too long ago the Crime Commission started an investigation and [fol. 358] one man ended up in jail and that was the crime commissioner. New Orleans is a very strange city so, here I am, while the fellows in the Parish Prison jammed up together will be there many months. At least, I am going to have a speedy trial. This defamation charge is obviously a violation of freedom of speech. We can trace back the origin of the right to speak freely to the Greek cities, particularly, in Athens where democracy had its origin. That's where Socrates exercised his right to speak freely but, of course, he was put to death for speaking it freely. Later on, in Rome, if you were an important man, you had so much freedom of speech but when the Middle Ages came along it disappeared and the first real positive signs

when it returned was when King John signed the Magna Carta. It did assure the Baron (?) some of their rights, which, in recent years at best could be recognized and in order to be sure those rights would be recognized, Parliament began. Parliament is literally the beginning of the source of free speech. Now, an interesting thing is in England where the right to free speech was so strongly recognized where it was involved that if the King did get [fol. 359] charged with defamation, he had a right to get a jury trial.

You will note that I filed a motion for a jury trial. I don't think I will get it but I would like to have it. As a matter of fact, if the English Courts wanted to try a man for contempt, he had to be given a jury trial and the theory was that the defamation was committed against the judge or the government, so you see this concept came over here. For instance, in 1621 there was a provision that any person had a right to speak his mind and in 1776 the Pennsylvania Constitution incorporated a version that every citizen has a right of free speech. Now, the interesting thing was, in early America, even as early as 1735, there was such consciousness to criticize the government, that in order to punish a person for contempt, you had to have a jury trial and if a person was going to be tried for criticizing a judge or a court, you could not have a judge try it. In the case of Peter Zenger, they had to give him a jury trial and the judge instructed the jury to find him guilty but the jury ignored him and acquitted him. When you have a judge or a summary trial where the verdict is involved, those rights are in jeopardy. Anyway, that's very briefly, the [fol. 360] freedom of speech concept. There were times right after, or before, the revolution when the people of this country were very conscious of it and there are other times when it almost disappears. Perhaps it's a result of prosperity but it occurs to me that this right has temporarily disappeared and I wonder if King George was born two hundred years later and they could have held on to the colonies—

Recently, many lawyers have said to me, what you said was absolutely right but you should not have said it. Other friends said there are things to be said on both sides. One

intelligent person said, in human relationship there is something to be said on both sides. I said, do you mean that if someone holds up a bank, there is something to be said on both sides? There are people who tend to say this when a situation like this is involved. If somebody came into my house and took a television set, should I say there is something to be said on both sides? What I said was not only right but I had to say it. I will continue saying what I think was the truth. I will not be stopped. What I said was, essentially, true and they don't work enough. It is [fol. 361] true, questions of influence were used. I will be standing up and telling the people of New Orleans every time I encounter trouble like this from a public official. I have to because I have no organization to turn to. I have no allies because the other officials are the "association of armed robbers." They want to know how we got in. It's a new phenomenon but we don't worry about it. Sometimes, we feel that our office is an Alamo. The way I feel is if you can last four years doing your job—we won't last four years if the time has come when we can go to jail for standing up and making an honest criticism—then I insist on going. I don't care how much these people try to conceal the facts with half-truths and downright lies, I will keep on making investigations of the law as long as I have a dollar and, if I run out of money, I will borrow it, or I will get it from the citizens because I know that the citizens of New Orleans are tired of having organized B-drinking. I know the people of New Orleans want the law enforced to the letter of the law and the reason is because they elected me without an organization. I accept that and will enforce every law to the letter of the law. I don't [fol. 362] know what twists and turns this will take but I promise you this: until the last day I am in office, you are going to get the best District Attorney's office possible but, if we can last three and one-half years more, then you will have the best District Attorney's Office in the United States. I will never back down. I don't care if the judges wear black robes or purple robes or a crown. I run the District Attorney's Office and will make the people of New Orleans proud they elected me. I will not let any judge or any public official block me in any way.

Thank you very much.

The Court: Do you have another witness, Mr. Gremillion?

Mr. Gremillion: Yes, sir. Call Mr. Robert Kelso.

Robert Kelso, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Jackson:

Q. Would you state your name please, sir?

A. My name is Robert Kelso.

Q. Where do you live, Mr. Kelso?

[fol. 363] A. At 1124 Louisiana Avenue.

Q. In New Orleans, Louisiana?

A. Yes.

Q. What is your occupation?

A. I am a newspaper reporter.

Q. How long have you so been employed?

A. I have been employed for both New Orleans newspapers for a total of approximately 11 years.

Q. And who is your employer?

A. My employer is the Times-Picayune and I now work for the States-Item.

Q. And how long have you been working for the States-Item?

A. Approximately four years.

Q. And in the course of your occupation and duties concerned therewith, did you have occasion to interview Mr. Jim Garrison?

A. I did.

Q. Do you know Mr. Garrison?

A. Yes.

Q. How long have you known him?

A. I am not personally—that is to say, I am not a personal friend of Mr. Garrison's. I have met him on occasions in the line of business.

Q. Do you recognize him in the courtroom today?

[fol. 364] A. Yes.

Q. Will you point him out?

A. He is right over here. (Indicating)

Q. Do you bear any malice or ill will toward Mr. Garrison?

A. None whatsoever.

Q. Now did you have occasion to interview Mr. Garrison sometime previous to December 4 or during the month of November, 1962?

A. I did.

Q. Now where was that?

A. In Mr. Garrison's office here in the Criminal Courts Building.

Q. How many times during this period did you interview him?

A. On two successive days, probably about five hours altogether.

Q. Have you since that time had occasion to interview Mr. Garrison?

A. No. I covered a story in which he spoke at a luncheon club but I didn't talk to him personally.

Q. But, you were assigned and you covered certain news which—

A. I was.

Q. —which involved Mr. Garrison?

[fol. 365] A. Yes.

Q. And at those times and places, was Mr. Garrison present?

A. Yes, he was.

Q. And those were in the Parish of Orleans?

A. Yes.

Q. Now, all these interviews were pursued pursuant to your occupation?

A. That is correct.

Q. And who directed that you take these missions?

A. My city editor.

Q. Did you notify Mr. Garrison of the purpose of your call or presence at all of these interviews?

A. The original, the period you mentioned around December 4, I did, yes. The other one, it was a routine coverage of a luncheon speech about two weeks ago, a little less than two weeks ago.

Q. At that time you didn't have occasion to speak with him?

A. I did not.

Q. Well, at the first interview, I am talking about the one in November, at which time you said, I think, you were with him on two and a half days or two different occasions, is that right?

A. Two occasions on successive days, a couple or three [fol. 366] hours each time.

Q. I see. Now what were the questions that you asked during the course of this interview? Did you ask him any questions?

A. I did.

Mr. Organ: If your Honor please, I just would like to have your ruling that our objection to all of these are general as to the testimony of this witness and these statements so we do not have to continue to make our objection. This is only for the purpose of malice that this is being introduced?

The Court: That is right. It is allowed and restricted to the purpose of showing malice only.

Mr. Organ: And our Bill of Exception or objection applies to this like it does to all the other testimony?

The Court: Yes.

Q. Mr. Kelso, do you remember substantially what you asked Mr. Garrison?

A. Yes.

Q. Do you remember substantially in sum and substance what Mr. Garrison replied in his responses to your questions?

A. Yes.

Q. Now were these correctly reported, these responses, [fol. 367] the sum and substance correctly reported by you in four articles which appeared in the States-Item, in the newspaper?

A. They were.

Q. I would like for you to, if you would—

Mr. Gremillion: I hand to Counsel—

Mr. Organ: I will look at them.

Q. So I hand to you four separate newspaper groups which the State will mark for identification "Four," "Five," "Six" and "Seven" and ask you if you recognize these as containing these series of articles which you just testified about.

A. Yes. They are running backwards. Otherwise it would be.

Q. All right, let's put them in chronological order.

A. It starts on a Monday, Tuesday, rather.

Q. These appeared on successive days of this paper?

A. Yes.

Q. They appeared on December 4, 5, 6 and 7, is that correct?

A. Yes, that is correct.

Q. This is the second of the articles on Wednesday, December 5?

[fol. 368] A. Yes.

Mr. Jackson: All right, for the record, these particular exhibits have been marked for identification, the paper of December 4, State "Exhibit Four," December 5, State "Exhibit Five," December 6, State "Exhibit Six" and December 7, State "Exhibit Seven."

(Whereupon, the documents offered by Counsel were duly marked for identification as "Exhibit Four," "Exhibit Five," "Exhibit Six" and "Exhibit Seven.")

Q. Do these particular portions of the newspaper contain the articles which you wrote, a series of articles in four installments?

A. If they have the continuation they do, yes. In each case there is a jump. (Checking)

Q. Would you examine those to see if we have them?

A. All right. You don't have it here. We have it. Yes, all of the articles are here in these exhibits.

Q. Now, Mr. Kelso, I note in some of these articles there are some direct quotes. Are those quotes that are made in the articles the exact words of Mr. Garrison as he made to you?

A. Yes, they are.

[fol. 369] Mr. Jackson: Counsel now offers into evidence State "Exhibits Four, Five, Six and Seven."

The Court: Let them be received.

(Whereupon, the documents previously marked for identification as "Exhibits Four, Five, Six and Seven," were received in evidence.)

Q. Now during the course of these interviews, Mr. Kelso, did Mr. Garrison ever display to you or express to you that he was angry about the actions of the judges?

A. I only recall one instance which involved my asking him a question about the letter that had been given to me by one of the judges, or rather, a copy of the letter they had sent Mr. Garrison earlier. It involved some disbursements from the Fines and Fees Fund, expenditures they had approved and some they had not approved and mentioned some of their reasons for not approving the ones that were disapproved and it went on to criticize in general the way the investigative money was handed out without, as the judges saw it, any effort being made to recover the funds. However, that was extraneous to my purpose in being there so I only asked him about it, asked him about the letter in connection with the funds. He said he had gotten a letter but it had irritated him and he didn't recall that he finished reading it so he called for a copy and read it and then we [fol. 370] discussed what he said in the letter.

Q. Did he make any other remarks or observations at this time?

A. In connection with this letter?

Q. In connection with the letter or his being mad or irritated—

A. Not that I recall.

Q. —by the action of the judges?

A. I should say that I didn't ask him. I wasn't there to ask him about the dispute with the judges other than as it was reflected in expenditures for undercover money and other expenses that the judges had some control over.

Q. Did he ask you or assign any reason for having made public his criticism of the judges of November 2, 1962?

A. Yes, in a general way. He started off by giving an account, a sort of resume of what had taken place from the start of his administration. He said among other things that he had built up the Fines and Fees Fund by making greater collections from bonding companies for forfeited bonds and that he had started out with his investigative work using some of this money. So, he went through the history of the thing which I don't think we need to go into now and said that he had learned, as I recall, it was about [fol. 371] October 3, at an en banc session of the judges who had, incidentally, told him in mid-summer they wouldn't sign any more warrants on the Fund until the judges got back from the summer recess. They had told him that henceforth it would take the signatures of five of the Criminal Court Judges rather than just one judge before any of these expenditures from the Fines and Fees Fund could be approved. He also said that he and several of his assistants had been told that—I don't recall that he said the judges told them, but that was the implication, that the judges would not approve reimbursements to Mr. Garrison for any of the money he spent from his bank loan, which has already been mentioned in testimony or they would not reimburse him out of the Fines and Fees Fund for these outlays and he said something like it had become ap-

parent that he wasn't going to get his money and that he decided to carry it to the public.

Q. In other words, at that point it was a deadlock, that is, when he deliberately made public his criticism, that is what you—

A. That was the impression I got from what he said.

Mr. Organ: Just a minute, please. I would like my objection to be in the record. Now the witness has testified to what Mr. Garrison told him and now the Attorney [fol. 372] General is asking the witness to give his impression of what Mr. Garrison meant.

The Court: The objection is sustained.

Mr. Jackson: If your Honor please, I think the objection of the previous witness, the Defense asked the demeanor. This is going into demeanor and all to show anger and malice.

The Court: Mr. Jackson, you can ask him what statement he might have made and what Mr. Garrison might have said, but you can't just have a witness express a general opinion or an impression of what the import of the conversation might be. Therefore, the objection is sustained.

Q. Mr. Kelso, was that the reason that he assigned for criticizing the judges? What was it?

A. That was the reason he assigned for discussing this openly.

Q. Well, what did he say in that regard?

A. I don't recall. If I have a quotation in the thing there —it may be—I don't recall other than he said it was at this point when it appeared that he wouldn't be able to get his money and that they didn't intend to give it to him, that he decided to make a public complaint of the issue.

Q. Was that the reason he assigned for his criticism?

[fol. 373] A. Yes. I should say that we didn't discuss the business about vacations since I was there to find out about money.

Q. I see.

A. In that context, he told me that that was when he decided to make a public complaint about the difficulties in dealing with the judges.

Mr. Jackson: If Your Honor please, these next questions are directed to laying the proper foundation for the admission of a confession. I would like to make Defense Counsel aware of this. (Exhibiting document to Counsel)

Q. Mr. Kelso, did you cover a particular talk which was made by the District Attorney on January 12, 1963?

Mr. Organ: Well, Counsel, if you are going to give the document to me to look at, let me look at it. Don't grab it out of my hands before I am finished.

Mr. Jackson: Excuse me. I wanted to open it up for you (returning document to Counsel).

Q. Mr. Kelso, I show you a portion—

Mr. Organ: If Your Honor please, I would like to have an opportunity to read the document which the Attorney General has handed me.

Mr. Gremillion: We are not going to use that document (taking document from Counsel).

[fol. 374] Mr. Organ: I don't understand the reason for handing it to me then.

Mr. Gremillion: Because we decided to take it back.

Q. Mr. Kelso, did you have occasion to report a talk given by the District Attorney, which was made on Friday, January 11, 1963, that you previously referred to as having covered?

A. I feel sure that I did. Was it reported as having spoken at the Monteleone Hotel?

Q. That is correct.

A. I did.

Q. This particular article, was that reported in the Times-Picayune on January 12, 1963?

A. In the States-Item in the afternoon of the day the address was given. It may have also appeared in the Times-Picayune. I am not certain about that.

Q. What did Mr. Garrison say at that time?

Mr. Organ: If Your Honor please, now I am going to object, unless this witness testifies that he can recall all of the substantial portions of Mr. Garrison's remarks relating to this case.

Q. Could you so recall, Mr. Kelso, in substance?

A. Yes, I think so.

Q. Now would you tell the Court in substance, as best you can, verbatim, what Mr. Garrison said.

[fol. 375] A. Well, I should say that I can't recall everything he said about the thing, but I was taking notes, and the things that I regarded as specially pertinent I do recall; I don't recall the whole thing.

Mr. Organ: Then, if the Court please, we move that this testimony not be allowed, what this witness regarded as—

The Court: You might qualify him.

Mr. Gremillion: If Your Honor please—

Q. Mr. Kelso, I am not asking that you report his talk in its entirety. All I am asking you is to tell us what he said about the judges in this case. Now you said you could remember that. Now would you tell us that. Go ahead.

Mr. Organ: If Your Honor please, as I understand the testimony of the witness, it was that he couldn't recall all of it, and the State should not be allowed to produce portions of what Mr. Garrison said here in an attempt to show malice. He may have said something else in that talk that completely puts a different meaning on that. As a matter

of fact, our position is that that was improperly reported in the papers and that there was a trend—the entire tenor of the talk was wrongfully reported in the New Orleans States.

Mr. Gremillion: Your Honor, we are not introducing the article. We are only using that to show the time he heard [fol. 376] this man make the statements, and all we are trying to get is the statement he made about these judges, and the sole purpose for it is malice.

The Court: Let me ask this—

By the Court:

Q. Did I understand you to say that you remembered the substance of all that was said there?

A. Yes, in connection with this case, yes.

The Court: If he can remember the substance of it, that is all that is required under the law.

Mr. Organ: If the Court please, he just said he could remember what he thought was important at the time.

The Court: I believe—

The Witness: I can't give you verbatim—

Mr. Gremillion: It's in the notes.

Mr. Organ: Let's read the record. Let's have the record read back.

The Court: You can read it back if you want to. That will be all right.

Mr. Jackson: I think the witness also has an explanation for his answer which will clear up the objection made by opposing Counsel.

The Court: If the reporter can't find it—

Mr. Organ: I would like to have it read. This is a very competent reporter, and I would like to have it read and [fol. 377] like to have it made part of a bill, if we are going to be overruled on this.

The Court: Off the record.

(Discussion off the record.)

The Court: All right. Read it, please.

(Whereupon, the record was read back by the reporter, beginning at page 123, line 14, through page 126, line 4.)

The Court: Objection overruled.

Mr. Organ: To which ruling we will reserve Bill of Exception No. 11, and we ask that the question—all of the questions leading up to—all the testimony of this witness, the question of the Attorney General, our objection and the reason for the objection, and His Honor's ruling, and we ask that our previous bill of exception and our position as to this type of testimony be made a part of the bill of exception along with the record and all of the testimony.

By Mr. Jackson:

Q. You may answer.

The Court: In connection with the reservation of the Bill of Exception, the Court will state at this time that the witness has said he remembers substantially that which was said or remembers in substance that which was said, but [fol. 378] in response to a question by Counsel for the State, who asked him the question as to whether he can recall it verbatim, the witness said that he could not testify to exactly everything that was said, however, he remembers all of the substance, and, remembering the substance of the conversation, the Court thinks that the evidence is admissible. The Court will set forth in its per curiam to the bill of exception the legal reasons, for Bill of Exception No. 11.

What is the question now, Mr. Kelso?

The Witness: I have forgotten what it was.

Q. What did Mr. Garrison say in sum and substance at this meeting that you covered?

A. In sum and substance, in connection with the present case, he said these things—and he said these things more than once, because he is a rather eloquent speaker and oc-

casionally repeats his ideas in different forms: that there were some good judges in the Criminal District Court. He named Judge Shirley Wimberly by name, although I didn't report that, because he didn't mention other judges. But that the judges, whether they intended to or not, could hurt his office by acting in a bloc. And at another place in the speech he said that a number of my lawyer friends told me that what I said about the judges was true but that I shouldn't have said it. He also said that if he were [fol. 379] to make the criticisms that were involved in the charges against him, over again, he might word them differently, but he didn't know what wording would be better. He also said that, whatever the outcome was, he would never apologize for telling the people of New Orleans the truth. That was the statement that I put the lead of the story on. I think that is substantially all I recall about it.

By Mr. Gremillion:

Q. Now, Mr. Kelso, do you recall whether he said anything about some of the judges as against the other judges?

Mr. Organ: Object to the leading question, if the Court please.

The Court: Objection sustained. I think the question would be improper, Mr. Gremillion, as leading, and also the fact that it charges defamation of the law (?).

Mr. Gremillion: The State is taken by surprise by the remark of the witness, and I want to ask this particular question:

Q. Did you report in your story that statement, that Mr. Garrison said the statement he made did not apply to every judge in the Criminal Court? Do you recall that?

Mr. Organ: If the Court please, the witness just testified to that.

[fol. 380] The Court: He has testified to that. Mr. Gremillion, you couldn't be caught by surprise.

Mr. Gremillion: I didn't understand his answer.

The Court: If I understand his testimony, he said there were some good judges in the bunch, and I believe he named Judge Wimberly, but I don't think he went any further than that.

Mr. Gremillion: All right then. Fine. Let me just ask this question:

Q. Did he say anything else about the judges?

A. He said in connection with this voting as a bloc that the judges were under the leadership of the incredible Judge Bernard Cocke.

Q. Can you recall any other things he said about the Judges?

A. No, I don't believe so.

Mr. Gremillion: No further questions.

The Court: Court will stand in recess for fifteen minutes.

(Whereupon, a 15-minute recess was taken.)

[fol. 381] AFTER THE RECESS

Cross examination.

By Mr. Organ:

Q. Mr. Kelso, it is fair to state, is it not, that the impression that Mr. Garrison gave you was that the reason he brought these issues out to the public was because he no longer had any funds with which to continue his investigation?

A. Yes, it is.

Q. It is also fair to state that he did not give you the impression that he brought this out to the public solely because he had sustained a personal loss?

A. Yes, it is.

Q. Now, in your discussions with the Judges when you wrote your various—your series of articles there, did you discuss with them four automobiles that had been purchased by the District Attorney's Office?

A. The subject was brought up because it was one of the items on which payment had been withheld.

Q. Do you remember what kind of cars they were?

A. They were Chevrolets.

Q. Do you remember whether they were purchased at or near a wholesale price?

A. At that time, I only knew that they were purchased at what I thought was a very low price, something like [fol. 382] $1,748.00. As I recall, there were four separate items of $1,748.00.

Q. Now, did the Judges advise you that they had turned down payment of those items because they did not have a certified copy of the advertisement, the public advertisement?

A. Yes, they did.

Q. Had bids been let on that purchase?

A. The advertisement ran on three occasions in the Times-Picayune and also in the States-Item. That is all the knowledge I have of it.

Q. But your understanding was that they turned that down, they refused to authorize payment of those, solely because there was not a certified affidavit from the paper that it had been advertised?

A. They told me that the payment had been withheld because all that Mr. Dalton Williams, the Administrative Assistant District Attorney, who had been discussing a few of these matters with them, had presented them was a clipping, that it had just been cut out, the ad, which ran eight lines, and they said there was no way of telling what newspaper it was run in or when.

Mr. Organ: That is all the questions I have, Mr. Kelso. Thank you.

Mr. Gremillion: No further questions.

[fol. 383] (Witness excused.)

Mr. Gremillion: Call Mr. Bill Reed.

Bill Reed, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name please, sir.

A. Bill Reed.

Q. Where do you work?

A. I work at WWL-TV.
Q. How long have you been employed there?
A. Approximately four and a half years.
Q. What is your job?
A. I am News Director.
Q. For that station?
A. Yes, sir.
Q. WWL-TV—is that a television station?
A. That is a television station, yes, sir.
Q. Mr. Reed, do you know Mr. Garrison?
A. Yes, quite well.
Q. Is he in the courtroom?
A. Yes, sir.
Q. Did you have occasion to interview Mr. Garrison on [fol. 384] November 3, 1962?
A. I don't believe it was November 3.
Q. On or about November 3?
A. I interviewed Mr. Garrison a number of times. I believe the date nearest that was probably November 2, which I recall was a Friday.
Q. Of course, I am talking about this case, because I understand you interviewed him on many occasions about other things.
A. Yes, sir.
Q. But I am speaking about this case now. Did you interview him on or about the very early part of November about this case?
A. Yes, sir.
Q. Where did this interview take place?
A. In his office here in the Criminal Courts Building.
Q. Now, did you interview him on another occasion concerning this case?
A. Yes, sir.
Q. Do you remember the date?
A. Yes. I interviewed him two or three times relating to this case. I believe it was later on, and I believe that one was also in his office. I think that would be maybe 10 or 12 days later.
[fol. 385] Q. Do you recall the date?
A. November 16.
Q. Now, how was this interview made? Tell the Court please.

A. Well, on television it is a little different than the newspaper. We ordinarily set up our sound cameras, sound movie cameras with film in them, and we then more or less start. The idea is to be as brief as possible as we don't have too much time on our newscasts in which to put these films on. Everything everybody says, the questions and answers, are recorded on sound film.

Q. Do you have the sound films of the substance of these interviews?

A. Yes, sir.

Q. Were they subpoenaed in this Court?

A. They were.

Q. Did you give them to me?

A. Yes.

Q. Is this them? (Exhibiting reels to witness)

A. Looks like them. Yes, sir, it is.

Q. Yes. They are the ones you just handed to me?

A. Yes, sir, that is correct.

Q. Now, I understand from your testimony that these films represent the sum and substance of your interview with Mr. Garrison concerning this case. Is that correct?

[fol. 386] A. Well, sir, some of those films are at least one of them is not an interview.

Q. What is it?

A. It is a portion of the speech that Mr. Garrison made.

Q. No, sir. I am not speaking about the talk at Kolb's Restaurant. I am only speaking about the film clips No. 3 and No. 4.

A. Yes, sir, that is correct.

Q. I mean, I am talking about the—I am not talking about anybody else's interviews—I am talking about the two you made, which you have identified as having been on or about November 2 and November 16.

A. Yes, sir.

Q. Now do these films represent in sum and substance Mr. Garrison's comments concerning this case?

A. Yes, sir.

Mr. Gremillion: If Your Honor please, I would like to bring a camera in and show these to the Court. Call Pan-American Film out there.

The Witness: Mr. Gremillion, we have a good sound film cameraman here in case you need any help setting them up.

Mr. Gremillion: We have a set here from—

Q. Let me ask you something else while we are waiting [fol. 387] for these. Have you reviewed these films?

A. Yes, sir.

Q. Who did you review them with?

A. You, sir.

Q. And these are the identical films that you have referred to in your testimony?

A. To the best of my knowledge.

The Court: Mr. Gremillion, in order to save the Court's time, couldn't he testify as to what is in those interviews, what made Mr. Garrison say it?

Mr. Gremillion: Well, we have notes of the films that I could use to let him refresh his memory. If there is no objection to it, I would be very glad to save that time.

The Court: Off the record.

(Discussion off the record.)

Mr. Organ: Now it is understood, if Your Honor please, that our objection to all statements before and after apply to all witnesses, our bill of exception applies to all witnesses?

The Court: That is right, and the same ruling, that this evidence is admissible for the purpose of malice and restricted to that question alone.

Q. Now, Mr. Reed, on the occasion of the first interview, which was November 2, I believe, what did Mr. Garrison tell you? I am talking about the conversation now that I [fol. 388] previously asked you about in his office, when you were questioning him with the microphone, and he answered you. What did he tell you?

A. This recording was made in response to a meeting of the eight Judges that day, in which they said that Mr. Garrison's earlier remarks had been intemperate. They also had some other things to say. So I went to Mr. Garrison's office to interview him on his reaction to the Judges' comments. I asked him whether the Bar Association—they

asked—the Judges had asked for an investigation by the Bar, various Bar Associations.

Q. All right.

A. In Mr. Garrison's remarks, I asked him whether the Bar Association—whether the possibility of an investigation bothered him, and he said no, that he was not bothered by this investigation at all.

Q. Did you ask him about the responsibility for assigning cases on the docket?

A. Yes. The Judges in their criticism of Mr. Garrison had pointed out that the District Attorney is the master of the docket, that he is the one who sets the cases.

Q. And what was Mr. Garrison's reply to that question?

A. I asked him whether he bore any responsibility for this, and he said that—now I am trying to recall his exact [fol. 389] comments—

Q. Did he say anything about being charitable?

A. Yes. I am not sure it was in connection with that though. Yes, he said, "To be charitable, I would call that a lie," referring to the Judges and their fixing the responsibility on him.

Q. Now, Mr. Reed, did you ask him if he intended to meet with the Judges about this matter?

A. I said that the Judges had pointed out that they thought it would have been much better had Mr. Garrison met with them, and I asked him what he thought about that, whether this was not so, and he said, "They know, I believe, perfectly well it would have been a waste of time, that the only way to get these sacred cows back to work is by public reaction." As I recall it, those were almost the exact words.

Q. Now, did you ask him anything about the Judges taking vacations?

A. No, I don't believe I asked him anything specifically about that. I believe that this came out in one of the answers to an earlier question. Again, I am not quite sure what that question was, but he went on to say—he said that the Judges should be investigated too for taking 206 days of vacation a year before the legal holidays. Further in his answer he went on to say that it was outrageous for the Judges to be receiving $18,000.00 a year and taking this

[fol. 390] many days off, that for every trial date, I believe, there were two vacation dates.

Q. Mr. Reed, did he refer to this practice that he described to you—did he refer to it as any type of device or anything like that? Did he call it anything, their activity?

A. Oh, oh, yes. He said—he called it a racket. "The only way to refer to it is as a racket," and that the only way that the public would find out about it was for him to bring it to public notice.

Mr. Gremillion: We tender the witness.

Mr. Organ: Did you submit the witness?

Mr. Gremillion: Yes, sir.

Mr. Organ: There was some noise, and I didn't understand you.

Cross examination.

By Mr. Organ:

Q. Was there anything about Mr. Garrison's demeanor on any of these occasions that indicated that he was antagonistic and had personal reasons for bringing this out, making these statements?

A. Well, no, sir. I didn't notice anything antagonistic about Mr. Garrison. I felt or he seemed to me to not be calm. He was interested, very definitely, in this situation, but I couldn't tell anything about his motives. He cer-[fol. 391] tainly didn't give me the appearance that he was being vindictive or anything else.

Q. Is it fair to state that his entire appearance on these occasions was of someone who felt that there was a public wrong that should be brought out?

A. No question about it, yes, sir.

Q. Is it fair to state that at no time did Mr. Garrison show any personal animosity toward the eight Criminal District Judges?

A. Not as far as I was concerned, no, sir.

Mr. Organ: No questions.

Redirect examination.

By Mr. Gremillion:

Q. Mr. Reed, did Mr. Garrison volunteer these statements to you?

A. Well, yes, sir. I asked him for the interview, and then his answers were in response to my questions after he had agreed to be interviewed.

Q. Did you promise him anything for making these answers?

A. No, sir. He didn't promise me anything either.

Q. Did you subsequently broadcast these remarks on your news program?

A. Yes, sir.

Mr. Gremillion: That is all.

[fol. 392] Mr. Organ: No questions.

(Witness excused.)

Mr. Gremillion: If Your Honor please, could we have just about two seconds to check a couple of things please?

The Court: I will give you five minutes. The Court will recess for five minutes.

(Whereupon, a brief recess was taken.)

After the Recess

The Court: Proceed.

Mr. Gremillion: We are ready. Call Mr. Rotman.

Bern Rotman, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. What is your name?

A. Bern Rotman.

Q. Where are you employed?
A. WDSU-TV.
Q. Is that a television station?
A. That is correct.
Q. What are you employed as, sir?
A. Reporter.
[fol. 393] Q. What are your duties in that regard?
A. I cover stories, go out and look for news, find it, put it on the air.
Q. Do you know Mr. Garrison, District Attorney?
A. Yes, sir.
Q. Is he in the court?
A. He is.
Q. Would you point him out?
A. Yes, sir (indicating).
Q. Have you ever interviewed Mr. Garrison concerning this case?
A. Yes, sir.
Q. Do you recall the dates or the approximate dates?
A. Well, they ranged over a wide area, but I would think around—most often around the first of November or somewhere around there, 1962.
Q. Do you recall in sum and substance the remarks Mr. Garrison made to you concerning this case?
A. I believe so.
Q. On the first occasion that you interviewed him, would you tell us what he told you about this case?
A. Well, the first occasion that I can recall is the day on which the charges were filed against him and they were dismissed by the First Assistant, Mr. Klein, and I came [fol. 394] to Mr. Garrison in his office to ask him about the reasons for the dismissal and what would be done about the case then, and he told me that his office had dismissed the charges because they felt that there was a lack of sufficient evidence, and I said, "Well, it looks like the case may go before the Attorney General. What is your reaction to that, Mr. Garrison?" And he said something to the effect that, "Well, if it amuses them to carry this case further, well, they can go ahead and carry it further. I have my own business to attend to. As far as

I am concerned, as far as my office is concerned, the case is closed."

Q. When he referred to "them," who was he talking about? Do you know?

A. He didn't go any further than the "them." He did say—the only time he mentioned a particular person was the statement, "If it amuses them." He said this twice. He said it once in reference to the Clerk of Court, the Clerk of Court, "If it amuses the Clerk of Court to process this case"—because at that time there was some question as to whether the case would be processed, and then he used it again with the indefinite "them." I can infer who it was, but he didn't say definitely.

Q. Well, what impression was he giving you?

A. My impression was the Judges—

Q. Did he say anything else at this time to you that [fol. 395] you can recall as to his intentions about it?

A. As to his intentions? Well, no. His intention was at that time—and he was pretty emphatic about it—was that as far as he was concerned, the case was closed, his office had dismissed the case, and he did not feel that there was anything further to be done about it.

Q. Now, I take it that you are speaking about the affidavit, which the Judges had filed in the Clerk's office?

A. Yes, sir.

Q. —charging him with public defamation?

A. Correct.

Q. Now, did you talk to him after that?

A. Yes.

Q. When was that?

A. Oh, a week or so later when the Attorney General reinstated the case and I again went to his office and asked for an interview, and the sum and substance of that interview was that he said—he said, "It becomes apparent to me that someone is trying to get me out of office." He didn't say who was trying to get him out of office, but he said that—"By what has been happening, it is obvious to me that someone is trying to get me out of office."

Q. Now were these news interviews broadcast at your station?

[fol. 396] A. Yes, they were.

Mr. Gremillion: We tender the witness.
Mr. Organ: We have no questions, if the Court please.
Mr. Gremillion: That is all.

(Witness excused.)

W. W. THIMMESCH, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Jackson:

Q. Would you kindly state your name please.
A. Wieck W. Thimmesch.
Q. And what is your address, Mr. Thimmesch?
A. My residence address is 3407 47th, Metairie; my office address is 101 Supreme Court Building, New Orleans 12.
Q. What is your occupation?
A. I am Executive Counsel of the Louisiana State Bar Association.
Q. Are you also an attorney-at-law?
A. I am an attorney-at-law.
Q. What are your duties in connection with your position?
[fol. 397] A. I act as General Counsel to the State Bar Association, to its Committees, particularly the Committee on the Unauthorized Practice of Law and the Committee on Professional Ethics and Grievances.
Q. Are you in constant familiarity with the Canons of Ethics?
A. I beg your pardon, Mr. Jackson? I didn't hear your question.
Q. Do you deal principally in your position, one of the things, with the Canons of Ethics which govern the conduct of the members of the Bar?

Mr. Organ: Object to that as being irrelevant and immaterial to the issues in this lawsuit.
The Court: What is the purpose of this testimony? Off the record.

(Discussion off the record.)

Q. If an attorney has a meritorious complaint against a member of the judiciary, to whom does that go, in accordance with the Canons of Ethics?

Mr. Organ: That is the same thing, if the Court please.

Mr. Jackson: I just asked him to whom the complaint is addressed, if Your Honor please.

Mr. Organ: It is still irrelevant.

The Court: Mr. Jackson, I said you could ask him if any [fol. 398] complaint had been made by Mr. Garrison against the members of the judiciary. That is as far as you can go.

Mr. Jackson: Well, sir, he is not in a position to answer that, because he does not represent the particular body which receives these particular complaints. He is just—

The Court: Then, I wouldn't let you ask him anything about it at all.

(Witness excused.)

The Court: Do you need this in the record?

Mr. Jackson: Just to show that the State has now excused the witness, who was called under subpoena by the State.

Mr. Gremillion: The State calls Judge Malcolm O'Hara.

JUDGE MALCOLM V. O'HARA, a witness called by and on behalf of the State of Louisiana, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gremillion:

Q. State your name please.

A. Malcolm V. O'Hara.

Q. What is your occupation?

A. Judge, Section "A," Criminal District Court, Parish [fol. 399] of Orleans.

Q. When were you elected?

A. July 28, 1962.

Q. Did you hold public office prior to that time?

A. Yes, sir, immediately prior to my resignation. I was a State Senator for the Sixth Senatorial District, elected in 1960.

Q. How long prior to that time did you hold public office?

A. Prior to that time I was an Assistant District Attorney, and prior to that I held office as Special Assistant District Attorney and First Assistant District Attorney.

Q. How long were you in the District Attorney's Office?

A. 1954 to '58.

Q. Where did you graduate, sir?

A. Tulane Law School.

Q. Are you married?

A. Yes, sir.

Q. Children?

A. Yes, sir, four.

Q. How old are they?

A. Thirteen, eleven, eight and seven.

Q. Now, Judge O'Hara, have you had occasion to read [fol. 400] the statement made by Mr. Garrison, District Attorney, that was published in the States-Item of November 2, 1962?

A. Yes, sir, I read the statement.

Q. Is that statement true?

A. Absolutely not, Mr. Gremillion.

Q. Have you ever attempted to tell the District Attorney how to run his office? I am talking about District Attorney Garrison, the Defendant in this case.

A. You mean Jim Garrison?

Q. Yes.

A. Have I ever attempted to—

Q. Have you ever attempted to tell Jim Garrison how to run his office?

A. No, sir.

Q. Have you ever sent him any messages on how to run his office?

A. No, I don't. I talked to his assistants from time to time and made suggestions, but I have never issued any directives.

Q. What section are you Judge of? Did you state?

A. Section "A."

Q. Who controls the assignment of cases in your docket?

A. The District Attorney or the Assistant assigned to my section.

[fol. 401] Q. Judge, do you consider yourself a sacred cow?

Mr. Organ: If the Court please, I object to that. That is not relevant and material. This is one time the Judge has no right to render an opinion.

The Court: What is that you say?

Mr. Organ: This is one time the Judge has no right to render an opinion. He is here to give facts.

The Court: I don't think that is relevant.

Mr. Gremillion: He said they were sacred cows. I wanted to find out if it was true or not.

Q. This statement issued by Mr. Garrison that was published in the paper, has that subjected you to ridicule to any extent?

Mr. Organ: I am going to object to that, unless the witness has—I object to this witness giving any testimony along that line on the ground that a proper foundation has not been laid for it and what other people have told him is purely and simply hearsay, if that is what he is about to testify to.

The Court: I think you better rephrase the question, Mr. Gremillion.

Mr. Gremillion: All right. I will be very glad to rephrase it, Your Honor.

Q. As a result of the statement made by Mr. Garrison that I referred to, have you been affected in any way?

[fol. 402] Mr. Organ: I object to that, if the Court please. He asked him as a result of this statement. That calls for the witness to render an opinion as to effect as a result of the statement, and I don't think that is pertinent here.

The Court: Off the record.

(Discussion off the record.)

The Court: Go ahead and answer.

The Witness: Restate it for me now, Mr. Gremillion. You have asked me if I have suffered anything as a result of—

Q. Yes.

A. —the statement?

Q. Yes.

A. Well, I am going to have to answer that this way: Naturally, being in public office and having held public office for a number of years, I know a number of people, and the impression that I get from the people who discuss this matter with me—it is done in the following ways: People jokingly ask me if it is true that we get all these vacations, whether or not I am a sacred cow, or whether I am influenced by racketeers. It is no one person or nothing specific; it is a cumulative sort of a thing done in a joking sort of manner, but the one thing—my one impression out of the thing, if this is admissible—is that the bench, the [fol. 403] criminal bench, seems to be getting the worst of public opinion, that the bench has suffered to some extent as a result of it, but nobody has hit me or threatened me or anything like that.

Mr. Organ: If Your Honor please,—

Q. But these instances have occurred, have they not, since this article was published?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Organ: I have a motion to make, if Your Honor please. I move that the answer of the witness be stricken, because it shows—No. 1, it is based on his impression, which is purely opinion; No. 2, if anything, it was based on hearsay, and I move that the answer of the witness previously given be stricken from the record.

The Court: I think he has a right to show the result of the statement, whether it would be defamatory or non-defamatory. He certainly has a right to show whether or not it has resulted in any injury to him or brought home to him that the public—that he has noticed a difference probably in social relationship that he might have had with the parties. Now don't take this.

(Discussion off the record.)

Mr. Organ: If the Court please, I think we may save time by this: First of all, I do want to reserve a bill of exception, because I don't want to open any doors by not reserving a bill, so I would like to reserve an exception [fol. 404] to Your Honor's ruling and include in the bill the question, the answer, our motion to strike the answer, Your Honor's ruling on the objection, our reasons for making it, all of the testimony in the case, the entire record of the bill of information, and that would be Bill of Exception No. 10, and I will ask that that bill of exception and the objection be made general without the necessity of repetition as to all of the Judges, if they should take the witness stand, and the rest of this Judge's testimony, if the Court please.

The Court: All right. That goes into the record. At this time I am going to state that the objection did not come until after the question was propounded—I believe you did object—

Mr. Organ: I did object before, and then I moved to strike it.

The Court: That is right.

Mr. Organ: —because it showed that it was both hearsay and it was impressions.

The Court: All right. The Court admitted this—not as to any conversation that took place outside of the presence of the Defendant—the witness could not testify as to conversations outside of the presence of the Defendant. However, the Court is of the opinion that any statement made such as would give rise to an action in defamation would be a statement such as might have an effect upon [fol. 405] the pulse of the public, particularly in the case of a public officer. The Court is allowing the evidence to stand solely for the purpose of showing whether there was any reaction of the public, without the details of the reaction, if there was any reaction of the public to the public article such as it would bring it within the intendment and the definition of *defamation* as set forth in the Revised Statutes, Title 14, Section 47, and restricting it to that. I am restricting it to that and that alone, to show that there might have been a reaction of the public in ac-

cordance with the definition of *defamation* as set out in that Article.

Q. Now, Judge O'Hara, the incidents that you have referred to a minute ago, have they occurred more than once?

A. I would say so, yes, sir.

Q. Have they occurred on more than one occasion?

A. Yes, sir.

Q. Have they occurred at more than one place?

A. Yes, sir.

Q. Have they all occurred in the City of New Orleans?

A. Yes, sir.

Q. Judge O'Hara, are you influenced by racketeers in any of your actions as a Criminal District Judge?

A. Absolutely not.

Mr. Gremillion: We tender the witness.

[fol. 406] Cross examination.

By Mr. Organ:

Q. Judge, when were you sworn in?

A. September 25, 1962.

Q. Did you take the bench immediately?

A. Oh, about five or six days later. We had to move our courtroom equipment around. It took us about a week to get started.

Q. Now, did you tell various assistants of the District Attorney's Office that the Judges, meaning you and the other Judges, were not going to approve continued vice investigation funds out of the Fines and Fees Fund?

A. I did make certain remarks along those lines, but I want to explain them and explain them as thoroughly as I can.

Q. Well, please do.

A. Shortly after I took office, I had occasion to meet with Frank Klein, the First Assistant District Attorney, and the subject of motions and expenditures, of course, was com-

monplace—it was the discussion of the building in general—and Mr. Klein and I got to talking about these motions, and I emphatically, and, I believe, categorically told Frank Klein that I would not sign any so called motions for undercover work or vice work, whatever you want to call it. I didn't say that the other Judges wouldn't. I said some [fol. 407] of them—my impression is that some of them may not, but I said that I am not going to.

Q. All right, sir.

A. Now let's go on a little bit more. I believe that I made a similar statement to Mr. Frank Shea, I believe. I believe I mentioned it to John Shea, who is the Assistant District Attorney assigned to my section, and I believe that I made a similar statement to Mr. Dalton Williams, who is the Assistant Attorney, I believe, in charge of administrative matters within the District Attorney's Office.

Q. Now, Judge, you have lived in New Orleans for how long?

A. All my life.

Q. All your life. You have been aware, have you not, that there has been a practically continuous violation of the B-drinking, prostitution, and gambling statutes in New Orleans all of your life, too, haven't you?

A. It seems to be continually in the newspaper.

Q. Right. Now, you are also aware, are you not, that the District Attorney was waging a rather successful campaign to the extent that he was able to close up some Canal Street bars, namely, the Monkey Bar and the French Casino and bars in that area that had been open at least 20 years, had he not?

A. That is correct.

[fol. 408] Q. And those were closed just before you took office, sometime in August? Is that correct?

A. I wasn't in the city in August, but I believe it was right around that time.

Q. But that was the first time in 20 years that those places had been closed, in at least 20 years?

A. As far as I know, that is right.

Q. And those places, to your knowledge, were places where there had been a great many violations of B-drinking and prostitution particularly?

A. Well, not to my knowledge, but from what I had heard, these were the—

Mr. Gremillion: Just a minute. If he heard it, it is hearsay, Your Honor, and I am going to ask that he testify to what he personally knows. I know that on cross-examination he has got a wide latitude, but let's stick to what this witness knows. If he can testify that he has been in those places and seen those things, it is admissible.

The Court: I think the evidence should be confined to what the witness may know and not to hearsay.

Mr. Organ: Well, if Your Honor please, we are not—we think it is admissible on the basis that we are trying to show that this was public knowledge, this is something generally known in the City of New Orleans about these places and not hearsay. This is something that is generally [fol. 409] known, because there were many arrests in these places. It appeared in the newspapers time and time again. It is not hearsay.

The Court: Ask him those questions, but don't ask him what—

Q. Now is it not a fact, Judge O'Hara, that because the newspaper stories showed continuous—rather, indicated continuous violation and arrests there over the period of years, and because of actual arrests at those areas, which were reported, that these places were generally known to be places where there were hotbeds of B-drinking and prostitution.

Mr. Gremillion: Just a minute. Object to that, Your Honor. I don't see how it is possible for this witness to know all that. The best evidence of that would be the convictions and the court records. You might ask him if he is familar with those or ask him other things, but he can't testify to all that. That is obviously hearsay.

The Court: Mr. Gremillion, I believe he said he was District Attorney for a period of time.

The Witness: About two years.

The Court: He should have some knowledge.

Mr. Gremillion: He has never asked him that, Judge.

The Court: He testified to it when you asked him that. It is in the record. It doesn't make any difference which

one asked him. He said in giving his qualifications in [fol. 410] answer to your questions that he had served in the District Attorney's Office.

Mr. Gremillion: That is true, but I didn't ask him about any B-drinking and closing bars, and that is what he is going into now, and that is what I am objecting to. If he asks him about his experience in the District Attorney's Office or in the Senate or as a Judge, that is perfectly all right, but I don't believe this witness can say that he has seen B-drinking in the Monkey Bar unless he testifies he has been there and seen it.

The Court: I believe this witness has testified already that he has no knowledge from having seen it—I don't presume that—but certainly, as a matter of general knowledge, he would have the right to testify as to what his experiences have been in holding the District Attorney's office and in any other matters that might come to his attention. Go ahead and answer the question.

A. To answer the question, during the four years that I was in the District Attorney's Office, there was a constant flow of violations which emanated from the Canal Street area that you have made reference to and a constant flow of violations, of various vice activities, which emanated from the French Quarter, that is, during my four years, and, as far as I know, a lot of people—not a lot of people, but some people have called me at various times for parole [fol. 411] while I was in the Senate, for paroles for violating various city ordinances, which occurred in that area, so I would say that it has been a continual sort of a thing, as far as I know. Now, during the Dowling administration, I don't know. I don't believe that I ever represented any of those people; so I don't know what happened during those four years.

Q. But it is fair to state that over all those years that the police force itself had never been able to close these places down. Isn't that correct?

Mr. Gremillion: Your Honor, I hate to be objectionable. He is asking this man is it a fact that the police force hadn't been able to close it down.

The Court: Don't go into that. You can ask him his knowledge of that, but what somebody else might have done is not admissible.

Q. Did the police force ever close these places up?

Mr. Gremillion: I again object.
The Court: It might be within his knowledge.

A. When I was in the District Attorney's Office, we padlocked some place. My recollection is that it was some address on Jackson Avenue, which is quite far removed from this immediate vicinity.

Q. But in the Canal Street places—

[fol. 412] A. I know of none prior to Mr. Garrison's administration.

Q. Now, as the former Assistant District Attorney, isn't it fair to state that nothing could have been to the greater advantage of the Canal Street operators, the Canal Street joint operators, than to have the District Attorney's Fines and Fees Fund funds blocked from use in investigation?

A. I disagree with you, Mr. Organ. I think your question is a pretty broad statement. I am not sure of where you are going and what you are seeking to elicit from me. Be a little more specific, and I will try to answer your questions.

Q. All right.

A. I am not trying to evade answering.

Q. I am sure you are not.

A. I am just—pin it down just a little bit.

Q. If the District Attorney with the proper funds could conduct an operation against these vice joints on Canal Street that were successful in closing them, would it not be to the very interest of these Canal Street operators to keep the District Attorney from having funds with which to do that?

Mr. Gremillion: If Your Honor please—

A. You are asking me for an opinion.

Mr. Gremillion: Wait just a minute. He is asking the [fol. 413] witness for an opinion.

The Court: Objection sustained.

The Witness: Let me answer that, sir. May I make a—

Mr. Gremillion: The Judge has sustained the objection, Judge.

The Witness: I understand. I understand.

Q. Now, Judge, I am sure you are familiar with the law under which the Fines and Fees Fund was made available to the District Attorney's Office.

A. Yes, I know.

Q. That law was enacted during the previous administration of Mr. Garrison (sic). You are aware of that?

A. I think it was passed in 1960.

Q. Now, you are also aware, I am sure, that that law requires the signature of one Judge on a motion to O.K. expenditures from that fund.

A. Yes, that is what the law says.

Q. That is what the law says?

A. Yes.

Q. Now, in that connection, did a rule that the Judges made sitting en banc in October of 1962 comply with the law?

Mr. Gremillion: I object to that. That calls for an opinion of the witness. He can state what the Court did [fol. 414] en banc, but whether it complies with the law is for this Honorable Court to decide, because the law speaks for itself, Your Honor.

Mr. Organ: If the Court please, this witness is both a Judge and an attorney and a former Assistant District Attorney, and certainly he has the right to render an opinion on the stand. I am asking him for an opinion, if in his opinion—

The Court: At this time though he is a witness, he is not acting as anything, Assistant District Attorney or Judge.

Mr. Organ: But doesn't it go to bias and motive, Judge?

The Court: What is that?

Mr. Organ: As a witness, if we can show that this Judge did not consider that their ruling complied with the law, and yet their—

The Court: The facts will speak for themselves. I believe that statute is one of 1960, and I believe—

Mr. Organ: No question about that.

The Court: —we in the country come under the first paragraph and I believe the District Attorney of New Orleans comes under the second paragraph of that statute, and I believe it provides for approval by one of the Judges. Now you can prove that they did not pay on the [fol. 415] approval of one of the Judges but probably required five, but, now, to call on the witness to give an expression as to whether or not his actions were legal or not would be calling for his opinion. It would be up to me to consider whether his action was legal or not.

Mr. Organ: I am in full accord with what Your Honor says, if the Court please, and I am not calling on him for legal opinion which would have any bearing or weight on the Court as a legal opinion, but to show the state of mind of the Judges, that they knowing, because they are legally trained, knowing that the statute only called for one signature, they made an arbitrary ruling that five Judges had to sign it, so it goes to the—

The Court: That speaks for itself, Mr. Organ.

Q. You did have an en banc meeting in October?

A. I believe we had several of them. I do know that there was—our first one was October 4, I believe, and then I believe there was perhaps a series of them, relating to disbursements of fines and fees monies.

Q. When did that meeting start on October 4th, what time of day?

A. What time of day?

Q. Yes.

A. I believe that we met—I think that the Judges started the meeting—this is the best I can recall, Mr. Organ—[fol. 416] that we met sometime in the morning, and I believe we invited Mr. Garrison to attend the meeting, which was continued into the afternoon, and Mr. Garrison came in at approximately 1:30 in the afternoon.

Q. Now, in other words, that meeting was actually called to discuss the Fines and Fees Fund, was it not?

A. Yes, sir, yes, sir.

Q. And you know for a fact that Mr. Garrison was invited to take part in that meeting, do you not?

A. He appeared before the Judges by invitation, I believe.

Q. By invitation. You also know, do you not, Judge, that his invitation called for him to appear at 1:30?

A. I believe it did.

Q. —in the afternoon, but the Judges had previously met all that morning. Isn't that correct?

A. As I recall, we met prior to Mr. Garrison coming into the room that afternoon. I am almost positive of it.

Q. And isn't it a fact, Judge O'Hara, that the decision as to how to handle the Fines and Fees Fund were made by the Judges before Mr. Garrison ever had an opportunity to present his views?

A. You could be right, Mr. Organ. I can't pin it down that much. I believe it was that day or it was very shortly [fol. 417] thereafter that the five-Judge rule went into effect, but whether it was decided that morning, I can't be positive.

Q. Well, do you recall when Mr. Garrison entered the meeting with the Judges sitting en banc that he was informed that the five out of eight rule was going to be applied? Do you recall that?

A. I believe you are right, but, as I say—in other words, I am not absolutely positive, but I believe that you are right.

Q. In other words, the decision had already been made and settled before he ever got there?

A. Possibly.

Q. All right. Now, what was that rule, that five out of eight Judges would have to sign a motion before any funds could be paid out of the Fines and Fees Fund?

A. I don't believe it applied to all expenditures. I believe it applied to everything except emergency orders for extradition and repayment of expenses incurred by witnesses and so forth.

Q. How many had to sign in case of extradition?

A. They were termed—I think they came under the category of emergency orders and require three signatures.

Q. Three signatures, of three Judges?

A. Correct.

Q. How much is your salary, Judge?

[fol. 418] A. $18,000.00 a year.

Q. Now are you familiar with the legal holidays?

A. To some extent. I couldn't reel them off for you, Mr. Organ.

Q. Now, of course, for that $18,000.00 a year, you do not work on Saturday and Sunday?

A. No, sir. As a rule we do not, no. I don't.

Q. Excuse me. Go ahead.

A. I said I don't work on Saturday.

Q. Now also Act 210 of 1958 sets out the legal holidays, and you do not work on legal holidays, precisely as follows: All Saints' Day, Armistice Day, Thanksgiving Day, Christmas Day, New Year's Day, Battle of New Orleans, Robert E. Lee Day, Washington's Birthday, Good Friday, National Memorial Day, Confederate Memorial Day, Independence Day, Huey P. Long Day, Labor Day, and Christopher Columbus Day. Now those are the legal holidays, are they not, Judge?

A. They are legal holidays, but that does not imply or infer that I am not at the office or some other Judges are not.

Q. No, I am not trying to imply that.

A. They are holidays. I believe—I think you are reciting them from the statute.

Q. Unquestionably you are entitled to close your Court and not be hereon those days.

[fol. 419] A. That is what the law says.

Q. In addition to that, there are two other days, Mardi Gras Day and Election Day, on which the Court is not open?

A. That is right.

Q. Is that correct?

A. Yes.

Q. Now, Judge, if I were to advise you that if you take the Saturdays and Sundays, the legal holidays, and Mardi Gras and Election Day away from the 365 days in the calendar year, that would leave 246 working days, would you disagree with my arithmetic on that?

A. I don't think so.

Q. Now, you are also entitled under the law, are you not, to two and a half months of vacation?

A. That is what the statute says, yes, sir.

Q. Right. So would it be fair to say then—

Mr. Gremillion: If Your Honor please, I object to the irrelevancy of this. I realize that the witness is under cross-examination, but that is not this witness's fault—the law provides that. The Court can take cognizance of all this.

Mr. Organ: I am laying the groundwork for—

The Court: I am familiar with it, but I don't mind his repeating it.

[fol. 420] Q. Then would it be fair to state that a Judge of the Criminal District Court is entitled to an additional 50 working days off of that 246 days?

A. You mean 50 vacation days?

Q. Another 50 working days. In other words, we have 246 working days left, having already taken out Saturdays and Sundays and the legal holidays. There are five working days in a week and 10 weeks in a two and a half month period, so you have 50 working days that you are entitled to vacation.

A. I believe that is right.

Q. And that would leave 196 working days. Would you quarrel with my arithmetic there?

A. I don't think so.

Q. So, Judge, then presumably the Court should be in operation 196 days of the year. Is that correct?

A. Presumably, excluding sickness and such things as that.

Q. Now, if I told you that the Court took as much as an additional 70 working days, without being in operation, off of that reduced figure of 196 days, can you quarrel with my mathematics on that?

A. If they took what?

Q. An additional 70 working days in addition to Saturdays and Sundays, legal holidays, Mardi Gras, Election Day, and another 50 vacation working days—if I advised [fol. 421] you that over a period of one year, one Court took an additional 70 days, would you be surprised?

Mr. Gremillion: If Your Honor please, I think that is highly irrelevant. He is asking this person somthing that he doesn't know about.

Mr. Organ: He may be familiar with it.

Mr. Gremillion: We are not trying this man for inefficiency.

Mr. Organ: He can say he doesn't know.

Mr. Gremillion: Just a minute. Let me finish my remarks. I am speaking to the Court. We are not trying this man for inefficiency; we are trying the District Attorney on a defamation charge—that is what we are really trying, and all these questions are immaterial. Now, if Your Honor wants to listen to them, it's perfectly all right with me, but I can't see where that has got anything to do with whether this Judge acted with racketeering influences in his decisions. That is the whole point of this case.

Mr. Organ: If the Court please, there is a lot more on the Bill of Information than racketeering information.

The Court: I am familiar with that. You filed an application for a Bill of Particulars, and in that application for a Bill of Particulars it said that it was adopting the whole statement and not taking—you asked for whatever part of it was considered defamatory. If I remember cor-
[fol. 422] rectly, the State answered your Bill of Particulars in its answer and said that the whole of the statement would be considered, and I agreed with their contention in overruling your motion for a Bill of Particulars for the reason that you could not take a statement out of context and that he had already answered it. Therefore, since the whole—since the indictment is predicated on the whole of the statement and the State says it is relying on the whole of the statement, then I think that perhaps you would have a right to question him on that feature of the Bill of Indictment since he is a witness. I don't think there is any question about that. Now off the record.

(Discussion off the record.)

The Court: All right. You may answer.

A. You asked me if I would be surprised?

Q. Yes.

A. I haven't made any study of the sections of the Code.

I couldn't say that your figure would be accurate or grossly incorrect. I really haven't studied it. If you ask my opinion as to whether I would be surprised, I know at least one Judge in the building who has a rule that there is no docket set on Friday, which would account for, say, 52 Fridays, so I am not shocked, no.

Q. What division is that?

A. As far as I know, it has been the practice of Judge [fol. 423] Cocke not to have a docket on Friday. I think he occasionally does. I don't know what those occasions are, but the general rule of Judge Cocke's operation is that he does not have a docket on Friday.

Q. And that is Division "E"?

A. "E," correct.

Q. Now, how long has it been since you have been Assistant District Attorney?

A. How long have I been away from the D. A.'s Office?

Q. Yes.

A. About five and a half years or so.

Q. Did you ever have anything to do with Division "B" while you were Assistant District Attorney?

A. Occasionally, when the man regularly assigned to "B" may have been sick or incapacitated, I might have sent someone into that Section, but, as far as being an active assistant in that Section, I never was.

Q. You were in a supervisory capacity over—

A. More or less, yes, more or less. I think that I handled a few stay pleas in there and other matters, but I was never regularly assigned there myself.

Q. You do know for a fact that it is very rarely that a trial is ever held in Section "B," do you not, Judge O'Hara? [fol. 424] A. I think that the bulk of the business transacted in Section "B" is by plea, and I would have to say not by jury trial. That is correct.

Q. Now, since you have been a Criminal Judge, can you tell me what kind of docket has been set by the District Attorney's Office?

A. You mean in my Section?

Q. Yes.

A. I would say a normal docket—the month of October—let's see—when I took office, we didn't have a jury in

October. We set probably what you would consider a normal non-jury month sort of a docket. November and December we had a jury docket, jury docket this month. The District Attorney in the first jury month I think set three cases a day, and during the months of December and January of 1963 I think he has been making a practice of setting about four felony cases a day.

Q. Well, now, isn't it fair to say that you certainly cannot say that the District Attorney has not tried to conclude as many cases as possible in your Section since you have been Judge?

A. I think that the docket is normal, sort of a routine situation in Section "A." I don't think that the District Attorney has been derelict. I may quarrel with some of his procedures, but I can't say that the administration has been [fol. 425] derelict by any means.

Q. Actually you certainly have no basis—you would certainly have no basis for saying that the District Attorney's Office is responsible for the backlog or the extraordinary number of people in the Parish Prison, could you?

A. I don't think it is an extraordinary number of people there. I mean, the building was designed for a certain number of people some 35 years ago, and I think that the place is probably experiencing very crowded conditions.

Q. Well, let me—

A. I don't think it is the result of the District Attorney particularly or his fault or the Court's fault.

Q. May I ask—

A. —population-wise.

Q. The answer to my question is that you could not lay the blame on the District Attorney's Office?

A. I don't think so. I think the District Attorney has set a regular docket and proceeded in a normal sort of manner.

Q. Now, Judge, did you ever have people communicate to you—now don't tell me what they have said to you, but did you ever have them communicate to you any opinions as to whether or not the District Attorney should press his investigation of vice in New Orleans or not—I mean people [fol. 426] from outside the Court?

A. Have I ever heard—

Q. Yes. Have you ever had people express an opinion to you—

A. Yes.

Q. —one way or the other about that?

A. In very definite ways, yes.

Q. In very definite ways? In other words, against his vice investigation?

A. No.

Q. For his vice investigations?

A. I would say so, yes.

Q. Would you say the majority of them are in favor of the vice investigations?

A. Yes, sir.

Q. Were any of them against the vice investigations?

A. I think a few people here and there, but the consensus was that perhaps it was a good thing.

Q. Now the point I am trying to make, Judge, is this: There were people who indicated to you that they didn't think that he should do that. Isn't that correct?

A. People didn't come directly to me and say, Garrison is no good because he is investigating or carrying on the investigation against vice in the [illegible]arter—nobody came to [fol. 427] me directly and said that. You will hear people talking about—probably the Bourbon Street proponents might say that perhaps this is being carried too far, but very very few of those, and I couldn't pinpoint them as to date, time, or place at all.

Q. So there were people that did express opinions in your presence?

A. You would hear general talk, Mr. Organ. People wouldn't come to me and lay their opinion on the line, but what I am trying to say is that, from what I have heard in various and isolated conversations among lawyers, business people, a pretty good cross segment of the community—you would overhear conversations.

Q. Now, you don't know the motives of those people, do you?

A. What is that?

Q. You don't know what the motives of those people were, do you?

A. No. I just think that there is a certain element in the community that is anti-law enforcement, that is all.

Q. Would you say that that element in the community is fostered by the racketeers?

A. I don't think so. I don't know.

Q. Can you tell us who originated the five out of eight [fol. 428] idea or concept in the en banc meeting?

A. The meeting is in some spots vague in my mind. I believe that the suggestion was first made by Judge Cocke, but I am not positive of that. I believe so.

Q. Was Judge Cocke more or less the moderator and moving force in that meeting?

A. He was very vocal.

Mr. Organ: I have no further questions.

Mr. Gremillion: If Your Honor please, it is 5:00 o'clock. We have quite a few questions to ask this gentleman. Before we take him on redirect, does Your Honor wish to finish with this witness or do you want to observe the Rule?

The Court: You would probably have a few questions on redirect?

Mr. Gremillion: Yes, quite a few, which were brought out during his cross-examination.

The Court: Then there will probably be recross. Unless you can get through in the next five or 10 minutes, I will recess until tomorrow.

Mr. Gremillion: I don't think it would be that short.

The Court: We now stand recessed until tomorrow morning at ten o'clock.

(Thereupon, at 5:03 o'clock p.m., hearing in the above-entitled matter was adjourned to Tuesday, January 22, 1963 at 10:00 o'clock a.m.)